



MEETING DATE: 3/17/08

ITEM NO: //

COUNCIL AGENDA REPORT

DATE: March 14, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

A handwritten signature in dark ink, appearing to read "Greg Larson".

SUBJECT: CONSIDER AN APPEAL OF A DECISION BY THE PLANNING COMMISSION APPROVING A TIME EXTENSION TO CONSTRUCT AND OPERATE A SKATE PARK ON PROPERTY ZONED RC. A MITIGATED NEGATIVE DECLARATION HAS PREVIOUSLY BEEN MADE FOR THIS PROPOSAL. CONDITIONAL USE PERMIT U-07-155 APN 529-05-049. PROPERTY LOCATION: **41 MILES AVENUE** PROPERTY OWNER/APPLICANT: TOWN OF LOS GATOS APPELLANT: JULIE DINAPOLI

RECOMMENDATION:

1. Hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Uphold the decision of the Planning Commission and approve the time extension for Conditional Use Permit U-07-155. (**motion required**).
4. Refer to the Town Attorney for preparation of the appropriate resolution.

If the Town Council concurs that the Planning Commission's decision should be reversed or modified the Council needs to find one or more of the following (**motion required**):

- (1) where there was error or abuse of discretion on the part of the Planning Commission; or
- (2) the new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or
- (3) an issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.

If the predominant reason for modifying or reversing the decision of the Planning Commission is new information as defined in Subsection (2) above, it is the Town's policy that the application be returned to the Commission for review in light of the new information unless the new information has a minimal effect on the application.

PREPARED BY:

A handwritten signature in dark ink, appearing to read "Bud N. Lortz".
BUD N. LORTZ

DIRECTOR OF COMMUNITY DEVELOPMENT

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Reviewed by: PST Assistant Town Manager OK Town Attorney
____ Clerk Administrator LC Finance ____ Community Development

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MAJOR AND TOWN COUNCIL

SUBJECT: 41 Miles Avenue

March 17, 2008

5. Refer to the Town Attorney for preparation of the appropriate resolution.

The Town of Los Gatos is the applicant for the time extension of the Conditional Use Permit, which is the subject of this appeal. Consequently, the Council has an additional alternative to withdraw the application. If the Council chooses to withdraw the application, no further action is required. This alternative is discussed in greater detail in the conclusion section of this report.

DISCUSSION:

1. Project Summary

The Town is requesting approval of a time extension to the Conditional Use Permit to construct a skate park on approximately 12,300 square feet of Town property. The site area is approximately 22,000 square feet and is currently used as a parking lot. The site is located immediately south of Balzer Field (a baseball field), east of Los Gatos Creek and the Los Gatos Creek Trail, west of Hwy. 17 and north of a Town yard used for landscaping supplies. One entrance to the park will be at the southwest corner of the site (adjacent to the Los Gatos Creek Trail) and the second entrance will be at the northeast corner of the site. The park will be enclosed by an eight foot high chain link fence. A drop off zone and five parking spaces will be provided along the eastern park boundary between the northeast entrance and Miles Avenue. The plans provided at this time are schematic and the details of the final design will be developed during the building permit process.

The existing parking lot contains approximately 34 spaces. The skate park will contain five parking spaces, and 21 spaces would be relocated nearby, resulting in a net loss of eight spaces. There is a minimum of 56 on-street parking spaces along Miles Avenue which the Initial Study noted was adequate to accommodate the loss of parking spaces at the subject site since the parking demand was determined to be less than the available parking supply.

2. Planning Commission

The Planning Commission considered this matter on October 24, 2007. The Commission accepted public testimony, closed the public hearing, and continued the matter to allow the Commission time to review the environmental documents prepared for the original Conditional Use Permit in 2004 and to allow staff time to prepare a response to the concerns raised during the public hearing (Attachment 4). On November 14, 2007 the Commission approved the Conditional Use Permit time extension (Attachment 6).

3. Appeal

An appeal of the Planning Commission's decision was received on November 19, 2007 (Attachment 1). The basis for the appeal is that the Commission erred or abused its discretion in that "conditions have changed."

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The most significant issues raised during the public hearing were parking, traffic and noise. What follows is a summary of the information provided to the Planning Commission prior to its action.

Parking - Based on the recent parking counts taken and the photographs submitted by the public, staff has determined that there is no new evidence to document that the existing on and off street parking demand along Miles Avenue is less than the available parking supply. The subject parking lot on average is not used to its fullest capacity and 56 on-street parking spaces are still available to accommodate the net loss of parking spaces. Even if the lot was fully used, as stated above, there is adequate parking available along Miles Avenue. In addition, there have been no new significant public events that have begun since 2004 and no new retail square footage has been added in the downtown area.

Traffic - Since the approval of the original application, staff estimates there has been a decrease in daily trips on Miles Avenue. This decrease is due to the reduction of seven full time Town employees and additional part time employees at the Corporation Yard and the transfer of the sanitary sewer maintenance function to West Valley Sanitation District whose offices are located in Campbell. Staff estimates that the average daily trips from the Corporation Yard have been reduced by eight to 14 trips.

Staff has not identified new evidence to support the conclusion that traffic conditions on Miles Avenue have changed significantly over the past three years. Police Department records also do not point to a traffic safety issue associated with the location of the skate park and/or Creek Trail users.

Noise - The Initial Study evaluated noise from the skate park and from skateboarders accessing the park on Miles and Edelen Avenues. The Study determined that the noise impact would be 1 and 1.8 dBA, respectively. The increase is not significant and is not perceptible to most people. Based on testimony, staff has not identified evidence that demonstrates that noise conditions have changed significantly over the past three years.

CONCLUSION

No changes are proposed to the project and the plans meet current Town requirements. There is no new evidence that conditions have changed to invalidate the previous data regarding this project.

The findings for granting a time extension under Town Code section 29.20.325(b) (Attachment 2) do not limit the discretion of the Planning Commission in deciding whether to grant an extension, with the single exception where a new application would be legally prohibited, which is not the case here. The Planning Commission determined that the physical and legal circumstances had not changed from the time the original Conditional Use Permit was approved. The Commission did not question the policy behind the selection of the Miles Avenue site for a skate park.

Council may exercise its discretion in deciding this appeal pursuant to Town Code section 29.20.300, which allows for the modification or reversal of a Planning Commission decision where: (1) there was an error or abuse of discretion by the Commission; or (2) new information is brought for the first time to Council; or (3) the decision involves an issue or policy over which the Commission lacks authority to modify or address.

As mentioned in the recommendation section, Council has an additional alternative action available which is to withdraw the application for a time extension of the Conditional Use Permit since the Town is the applicant. Any project applicant has the ability to withdraw their application at any time. In this instance, if the Council decides that the Town should not pursue a skate park at 41 Miles Avenue at this time, it may vote to withdraw the application. If the Council decides to withdraw the application, no further action is required and this proceeding will be concluded.

ENVIRONMENTAL ASSESSMENT:

It has been determined that this project will not have a significant impact on the environment and a Mitigated Negative Declaration was previously prepared for this proposal.

FISCAL IMPACT:

The skate park project is included in the FY 2007/08-2011/12 Capital Improvement Program. Project funding includes \$88,470 from the Town (the amount remaining from \$125,000 previously allocated), \$100,000 from Monte Sereno state bond funds (subject to an upcoming deadline to utilize the funds), and the remainder from community donations. To-date, \$14,697.29 has been received in cash donations.

Attachments:

1. Appeal filed on November 19, 2007.
2. Required findings.
3. Conditions of approval.
4. Verbatim minute excerpts from the Planning Commission meeting of October 24, 2007.
5. Report to the Planning Commission dated October 17, 2007 for the meeting of October 24, 2007 (Exhibits A and B deleted and incorporated as Attachments 2 and 3 of this report).
6. Verbatim minute excerpts from the Planning Commission meeting of November 14, 2007.
7. Report to the Planning Commission dated November 8, 2007 for the meeting of November 14, 2007 (Exhibit D deleted and incorporated as Attachment 2 of this report).
8. Photographs and correspondence submitted at the October 24, 2007 public hearing (nine pages).
9. E-mail and letter from Phil Knopf dated March 12, 2008 (two pages).

Distribution:

Julie DiNapoli, 130 Edelen Avenue, Los Gatos, CA 95030
BNL:RT:SLB:mdc

FILING FEES
\$286.00 Residential
\$1,149.00 per Commercial, Multi-
family or Tentative Map Appeal

Town of Los Gatos
Office of the Town Clerk
110 E. Main St., Los Gatos CA 95030

APPEAL OF PLANNING COMMISSION DECISION

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)

DATE OF PLANNING COMMISSION DECISION: November 14, 2007

PROJECT / APPLICATION NO: Skateboard Shop - CUP Application

ADDRESS LOCATION: 41 Miles Avenue

TOWN OF LOS GATOS
CLERK DEPARTMENT

Pursuant to the Town Code, the Town Council may only grant an appeal of a Planning Commission decision in most matters if the Council finds that one of three (3) reasons exist for granting the appeal by a vote of at least three (3) Council members. Therefore, please specify how one of those reasons exist in the appeal:

1. The Planning Commission erred or abused its discretion because

Conditions have changed

2. There is new information that was not reasonably available at the time of the Planning Commission decision, which is

(please attach the new information if possible): OR

3. The Planning Commission did not have discretion to modify or address the following policy or issue that is vested in the Town Council:

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

IMPORTANT:

1. Appellant is responsible for fees for transcription of minutes. A \$500.00 deposit is required at the time of filing.
2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10th day following the decision. If the 10th day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10th day, usually a Monday.
3. The Town Clerk will set the hearing withing 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967)
4. An appeal regarding a Change of Zone application or a subdivision map only must be filed within the time limit specified in the Zoning or Subdivision Code, as applicable, which is different from other appeals.
5. Once filed, the appeal will be heard by the Town Council.
6. If the reason for granting an appeal is the receipt of new information, the application will usually be returned to the Planning Commission for reconsideration.

PRINT NAME: JULIE DINAPOLI
DATE: NOVEMBER 19, 2007
PHONE: 839-9190

SIGNATURE: Julie Dinapoli
ADDRESS: 130 Calder Ave.

*** OFFICIAL USE ONLY ***

DATE OF PUBLIC HEARING: 3-17-08

CONFIRMATION LETTER SENT: Date:

Pending Planning Department Confirmation

TO APPLICANT & APPELLANT BY:

DATE TO SEND PUBLICATION: 2-13-08

DATE OF PUBLICATION: 2-26-08

REQUIRED FINDINGS FOR:

41 Miles Avenue

Conditional Use Permit U-07-155

Requesting approval of a time extension to construct and operate a skate park on property zoned RC. A Mitigated Negative Declaration has previously been made for this proposal. APN 529-05-049.

PROPERTY OWNER/APPLICANT: Town of Los Gatos

FINDINGS

Sec. 29.20.325 (b). Time extensions.

Before granting an extension of time the deciding body must find from the evidence:

- (1) There would be no legal impediment to granting a new application for the same approval.
- (2) The conditions originally applied or new conditions to be applied as a part of the extension approval are adopted to any new facts concerning the proposed project.

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CONDITIONS OF APPROVAL

41 Miles Avenue

Conditional Use Permit U-07-155

Requesting approval of a time extension to construct and operate a skate park on property zoned RC. A Mitigated Negative Declaration has previously been made for this proposal. APN 529-05-049.

PROPERTY OWNER/APPLICANT: Town of Los Gatos

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:
(Planning Division)

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below.
2. EXPIRATION: Zoning approval will expire one year from Council's action on this matter, unless the approval has been vested.
3. MULTI-USE FACILITY. Skateboarders, rollerbladers, and other skate type uses are permitted. Bicycles will not be permitted.
4. HOURS. Hours of the skate park shall not exceed 9:00 AM to sunset during the summer and on weekends and holidays. Hours of the skate park shall not exceed 3:00 PM to sunset during the school session. The skate park shall be locked when the park is closed.

(Building Division)

5. *CULTURAL RESOURCES. In the event that archaeological traces are encountered, all construction within a 50-meter radius of the find will be halted, the Community Development Director will be notified, and an archaeologist will be retained to examine the find and make appropriate recommendations.
6. *REMAINS. If human remains are discovered, the Santa Clara County Coroner will be notified. The Coroner will determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native Americans.
7. *REPORT. If the Community Development Director finds that the archaeological find is not a significant resource, work will resume only after the submittal of a preliminary archaeological report and after provisions for reburial and ongoing monitoring are accepted. Provisions for identifying descendants of a deceased Native American and for reburial will follow the protocol set forth in Appendix K of the CEQA Guidelines. If the site is found to be a significant archaeological site, a mitigation program will be prepared and submitted to the Community Development Director for consideration and approval, in conformance with the protocol set forth in Section 15064.5 of the CEQA Guidelines.
8. *FINAL REPORT. A final report will be prepared when a find is determined to be a significant archaeological site, and/or when Native American remains are found on the site. The final report will include background information on the completed work, a

description and list of identified resources, the disposition and curation of these resources, any testing, other recovered information, and conclusions.

9. PERMITS REQUIRED: A building permit shall be required for the construction of the future Skateboard Park. Separate permits are required for site retaining walls, electrical, mechanical, and plumbing permits as necessary.
10. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans.
11. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
12. SOILS REPORT: A soils report, prepared to the satisfaction of the Building Official, containing foundation and retaining wall design recommendations, may be required to be submitted with the building permit application. This report shall be prepared by a licensed civil engineer specializing in soils mechanics. ALTERNATE: Design the foundation for an allowable soils 1,000 psf design pressure. (Uniform Building Code Volume 2 - Section 1805)
13. FOUNDATION INSPECTIONS: A pad certificate prepared by a licensed civil engineer or land surveyor may be required to be submitted to the project building inspector at foundation inspection. This certificate shall certify compliance with the recommendations as specified in the soils report; and, the building pad elevation, on-site retaining wall locations and elevations are prepared according to approved plans. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered civil engineer for the following items:
 - a. Building pad elevation
 - b. Finish floor elevation
 - c. Foundation corner locations
14. TITLE 24 - COMMERCIAL: For any proposed tenant improvements, on-site general path of travel shall comply with the latest California Title 24 Accessibility Standards. Work shall include, but not be limited to, accessibility to building entrances from parking facilities and sidewalks.
15. SPECIAL INSPECTIONS: When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at www.losgatosca.gov.
16. NONPOINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter.
17. APPROVALS REQUIRED: The project requires the following agencies approval before issuing a building permit:
 - a. Community Development: Sandy Baily at (408) 354-6873
 - b. Engineering Department: Fletcher Parsons at 395-3460
 - c. Parks & Public Works Department: (408) 399-5777
 - d. Santa Clara County Fire Department: (408) 378-4010
 - e. Santa Clara Valley Water District

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:
(Engineering Division)

18. PARKING. Parking access shall be reconfigured to be from the site. No backup movements into Miles Avenue will be allowed.

19. RETAINING WALLS. A building permit, issued by the Building Department at 110 E. Main Street, may be required for site retaining walls. Walls are not reviewed or approved by the Engineering Division of Parks and Public Works during the grading permit plan review process.
20. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
21. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting an work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
22. EROSION CONTROL. Interim and final erosion control plans shall be prepared and submitted to the Engineering Division of the Parks & Public Works Department. A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the San Francisco Bay Regional Water Quality Control Board for projects disturbing more than one acre. A maximum of two weeks is allowed between clearing of an area and stabilizing/building on an area if grading is allowed during the rainy season. Interim erosion control measures, to be carried out during construction and before installation of the final landscaping shall be included. Interim erosion control method shall include, but are not limited to: silt fences, fiber rolls (with locations and details), erosion control blankets, Town standard seeding specification, filter berms, check dams, retention basins, etc. Provide erosion control measures as needed to protect downstream water quality during winter months. The grading, drainage, erosion control plans and SWPPP shall be in compliance with applicable measures contained in the amended provisions C.3 and C.14 of Order 01-024 of the amended Santa Clara County NPDES Permit.
23. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
24. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed.
25. STORM WATER MANAGEMENT PLAN. A storm water management shall be included with the grading permit application for all Group 1 and Group 2 projects as defined in the amended provisions C.3 C.3.d. of Order No. R2-2005-0035 of the amended Santa Clara County NPDES Permit No. CAS029718. The plan shall delineate source control measures and BMP's together with the sizing calculations. The plan shall be certified by a professional pre-qualified by the Town.
26. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.

27. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
28. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

(Parks and Forestry Division)

29. FACILITY. The facility shall be owned and operated by the Town or its designee.
30. *NOISE. The project contractor should be given the playing field schedule and should try to avoid operation of heavy equipment during the hours when baseball games are scheduled at this field whenever possible.
31. NOISE LEVELS. Noise levels shall be monitored on site, on Miles Avenue, and on Edelen Avenue related to skateboarders and skate park users. Measures to reduce noise levels shall be implemented if noise levels exceed the Town's noise ordinance.
32. SAFETY MEASURES. Town staff shall explore and implement as appropriate, methods to provide safety for skaters and users of the park who access the facility from Miles Avenue and the Los Gatos Creek Trail.
33. NEIGHBORHOOD MEETING. Staff shall organize a neighborhood meeting within one year of the opening of the skate park to determine whether operational aspects of the skate park should be adjusted or new measures should be implemented to address neighborhood concerns.
34. *PROTECTIVE FENCING. Trees to be retained shall be protected with fencing that is placed as far from the trunks as possible.
35. *ROOT ZONE. No construction vehicle traffic, foot traffic, paint solvent, or construction materials shall be allowed in the root zone.
36. *TRENCHES. Utility trenches within driplines shall be dug by hand.
37. *DRAINAGE. Drainage patterns shall not be changed around existing trees to be retained such that the health of the trees would not be adversely affected; water will not be allowed to pond under tree canopies.

38. *PRUNING. All pruning of existing trees shall be performed by a certified arborist and approved by the Town Parks and Public Works Department prior to work.
39. *GRADES. Grades shall not be changed around existing trees such that the health of the trees would be adversely affected.

*Required Mitigation Measures

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A P P E A R A N C E S:

Los Gatos Planning
Commissioners: Joanne Talesfore, Chair
John Bourgeois
Michael Kane
Phil Micciche
Tom O'Donnell
Steve Rice
Marico Sayoc

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

Transcribed by: Vicki L. Blandin
(510) 337-1558

LOS GATOS PLANNING COMMISSION 10/24/2007
Item #2, 41 Miles Avenue

1

P R O C E E D I N G S:

CHAIR TALESFORE: This is a new public hearing
and this is at 41 Miles Avenue. It's a Conditional Use
Permit, U-07-155. Requesting approval of a time extension
to construct and operate a skatepark on property zoned RC.
A Mitigated Negative Declaration has previously been made
for this proposal, APN 529-05-049. Property Owner/Applicant
is the Town of Los Gatos. And with that I'll have...is it Mr.
Tsuda? Mr. Korb? Who is going to open? Mr. Korb.

ORRY KORB: Thank you, Madam Chair. As you know,
the application before you today is to extend a previously
approved Conditional Use Permit. This permit has been
extended once previously. The Code section under which you
operate with regard to this application is 29.20.325.
Subsections (a) and (b) of that section both address time
extensions. The discussion really is limited at this point
to the question of whether to extend a permit that has
already been approved for this project.

The first of the two findings that are required
are that there would be no legal impediment to granting a
new application for the same approval. I think that language

LOS GATOS PLANNING COMMISSION 10/24/2007
Item #2, 41 Miles Avenue

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1 speaks for itself and you can refer to the Staff Report in
2 that regard.

3 The second finding concerns conditions originally
4 applied or new conditions applied as part of the extension
5 approval--it says "are adopted," I think are adapted--to any
6 new facts concerning the proposed project. The language of
7 the Staff Report indicates that there are no new facts
8 concerning the proposed project, at least the physical
9 elements of the proposed project.

10 So once again, your decision tonight is
11 limited to the sole question of extending the permit, not to
12 a discussion regarding the merits of a skatepark. Speakers
13 should keep that in mind in making their comments, and I'm
14 sure the Chair would ask that those comments again be
15 limited to the question of extending the permit rather than
16 the merits of the park, which again has already been
17 approved on that site.

18 CHAIR TALESFORE: Thank you, Mr. Korb. Mr. Tsuda,
19 did you have anything to add? Okay, Miss Baily.

20 SANDY BAILY: As Mr. Korb stated this is a request
21 to approve a time extension to a Conditional Use Permit to
22 construct a skatepark on approximately 12,300 square feet of
23 Town property which is currently used as a parking lot. The
24 site is located on Miles Avenue immediately south of the
25 Bowser Baseball Field. The application will expire on

1 December 8, 2007 unless a time extension is approved, which
2 would extend the expiration date for one year.

3 The hours of operation will be during daylight
4 hours seven days a week. The park will be enclosed by an 8'
5 high chain link fence.

6 At this time it is anticipated that skateboarders
7 and inline skaters would be allowed to use the park and BMX
8 cyclists would be prohibited.

9 It is anticipated that the maximum usage of the
10 park would be approximately 30-40 skaters at any given time
11 during the first year, gradually decreasing to an average
12 usage of approximately 10-20 skaters there after.

13 The existing parking lot contains 34 spaces. The
14 skatepark will contain five parking spaces and a drop-off
15 zone. There will be a net loss of 29 off-street parking
16 spaces. Parking studies were conducted to determine the
17 existing parking demand along Miles Avenue.

18 The first study was conducted for the original
19 application between the period of March 16-24, 2004. Of the
20 34 parking spaces available in the parking lot, 0-16 spaces
21 were occupied during this period. Of the 29 parking spaces
22 available in the Engineering Division parking lot, 3-15
23 spaces were occupied during this period.

24 Additional parking studies were recently conducted
25 this year between August 6-10, August 13-17, and October 9-
12. Of the 34 parking spaces available in the parking lot,

1 1-9 spaces were occupied during the August survey, and 3-7
2 spaces were occupied during the October survey. Of the 29
3 spaces available in the engineering division parking lot, 1-
4 20 spaces were occupied during the August survey, and 13-17
5 spaces were occupied during the October survey.

6 Based on the survey results, the parking demand on
7 Miles Avenue was determined to be low and that the on- and
8 off-street parking demand is less than the existing
9 available parking supply. Therefore it was determined that
10 with the loss of the 29 parking spaces there will be an
11 adequate supply of parking spaces within the remaining Town
12 lots on Miles Avenue. In addition, there are approximately
13 56 on-street parking spaces available on Miles Avenue if
14 there is a usually high demand for parking.

15 Pamela Jacobs, the Interim Town Manager is here
16 tonight to assist also in answering any questions you may
17 have about the skatepark.

18 CHAIR TALESFORE: Okay, thank you very much. I was
19 going to get there. Commissioner Micciche.

20 COMMISSIONER MICCICHE: You've been ignoring me
21 tonight.

22 CHAIR TALESFORE: I have not. That's not true and
23 that should not be reflected in the minutes. Thank you.

24 COMMISSIONER RICE: Should we vote on that?

25 CHAIR TALESFORE: No motion.

1 COMMISSIONER MICCICHE: During the Christmas
2 season, the holiday season, shopping season, that lot had
3 been used with transportation that the Town provided I
4 believe to ferry people back and forth to the shopping area
5 from that parking lot. During that time was that parking lot
6 filled, or necessary? Do we know? And are they still doing
7 that? I mean I guess that's my question.

8 RANDY TSUDA: The Interim Manager is indicating we
9 no longer do that, and we have substituted valet parking in
10 Lot #4 for that service.

11 COMMISSIONER MICCICHE: For that? Okay, thank you.

12 CHAIR TALESFORE: Would you identify where Lot #4
13 is? Do we know?

14 COMMISSIONER MICCICHE: It's between #5 and #3.

15 CHAIR TALESFORE: Thank you.

16 ORRY KORB: It's the parking structure between
17 University and Santa Cruz Avenue.

18 CHAIR TALESFORE: Thank you. They're not legal, so
19 I don't know that. All right, thank you. Commissioners, any
20 other questions at this time? All right. I have 31 speaker
21 cards, and so I'm going to call you up five at a time if you
22 would come over to this side of the Council chambers and be
23 ready, and we'll start with Citizen Ray first.

24 What I'd like to remind you is that this decision
25 that we're going to be making tonight is about the extension
of a previously approved Conditional Use Permit, and so if

1 you could address your comments to that extension and not to
2 the merits of skateboarding or the demerits of
3 skateboarding, but basically to what we're here for, which
4 is a time extension.

5 RAY DAVIS: Yeah, that's the real Joe Kapp right
6 there. (Audience applause.) Yeah. All right. The bear will
7 never die. The bear will never quit.

8 CHAIR TALESFORE: Okay.

9 RAY DAVIS: That's why I come to public meetings.
10 You never know who's going to be here. Wonderful in Los
11 Gatos.

12 But I want to tell you, the comments by the so-
13 called City Attorney have got my goat. Since when in America
14 do we go to a public meeting and have a city attorney tell
15 us what to think and what to say? I can't believe it. Cannot
16 believe it. They ought to fire that guy right on the spot.
17 Any American. Idiot.

18 Back to the issue at hand, the kids. I want to
19 tell you what happened to me. One of the main reasons I'm
20 here tonight is what happened to me in front of Los Gatos
21 High about two weeks ago.

22 I'm approaching the middle crosswalk where the
23 kids all come across. On my left I see a movement; it's a
24 kid on a skateboard. I said well he's way over there in the
25 street, not a worry, so I proceed ahead to cross the
crosswalk. All of a sudden this kid comes flying down on his

1 board; he must have been going 10-15 miles an hour. Not
2 walking, flying across that crosswalk, and he's right smack
3 in front of me and I'm heading right onto him at 25-30 miles
4 an hour. Whoo! Thank God I still have some reflexes. I hit
5 those brakes, and only because I hit the brakes in time is
6 he not in the hospital or worse.

7 So I'm here tonight to argue you need to extend
8 this time and do everything possible to make this skateboard
9 park a reality, because it's such chump change for the City
10 left to finance. Chump change. This City has \$70 million in
11 reserve that pulls in annually \$3.5 to \$4 million in
12 interest. It is a slush fund, uncommitted. And the amount of
13 money left to do the skateboard park is so minimal it is not
14 to be believed. So I ask you to vote for the kids, put the
15 kids first, and the community first, and lets quit messing
16 around with nonsense. Thank you. Everybody agree?

17 (Applause breaks out from audience.)

18 CHAIR TALESFORE: Excuse me. I'm going to have to
19 ask the audience that we do require that when you are here
20 that we maintain some decorum, and I know your enthusiasm
21 sometimes overtakes you, but if you could just contain
22 yourself. We don't appreciate applause at this time, so
23 thank you. It helps us get through the meetings. Vice-
24 chairman Kane.

25 COMMISSIONER KANE: I serve the Commission, I
serve the Town as Vice-chair, and I want to support the

1 Chair by reiterating what was said. Anyone can say anything
2 they want to when the mike is open you speak to the subject
3 before us. What the Chair has said, what the Town Attorney
4 has said, is that the corridor on this question is so narrow
5 we'd have trouble, any of us, getting down it. It's very,
6 very black and white, very, very narrowly defined that there
7 are legal impediments to granting this extension or not.
8 It's not the pros and cons on the park, it's just whether or
9 not we give it another year, and the Town Attorney and the
10 Staff Report have commented that the first extension is not
11 inappropriate, the second extension is not inappropriate.
12 It's a very narrow corridor. It's a very simple black and
13 white question. I just wanted to repeat what the Chair said.
14 It's not that we don't want to hear, it's that the only
15 thing before us tonight is so tiny and this is not a great
16 matter of consequence per se.

17 CHAIR TALESFORE: Thank you. I'm going to call the
18 next several names, and if you would just move over to your
19 right side of the room. That would be Brian Burris, followed
20 by Aaron Bean, followed by Phil Knopf, followed by Rick
21 DiNapoli, and followed by Judy Holcomb. And the first
22 speaker up would be Brain Burris.

23 BRIAN BURRIS: Hello, I'm Brian. I've kind of been
24 born and raised in Los Gatos. I'm a professional
25 skateboarder. I've been skating for about nine years now;
I've been pro for about three.

1 I don't really know exactly, because this has been
2 kind of brought to my attention recently, I've read
3 something recently by a guy named Jason Lustig I believe was
4 his name, and he made this mention about how a skateboard
5 park in this part of town is going to be kind of rough
6 because most skaters...

7 Skateboarding is a thing of the street, that's
8 what skateboarding is all about, and I don't know if I'm
9 getting off topic or not, but basically what it is is I've
10 had a lot of familiarity with that part of Town over off
11 Edelen Drive and whatever that main street is, I can't
12 remember. But over at Balzer Park, that's like a real
13 hardcore parking spot; a lot of people park there.

14 I'm really all for the skatepark, there's nothing
15 wrong with it to me, but I guess I feel like maybe it should
16 be at another location, because I've had to park in that
17 neighborhood a lot and I've gotten a lot of tickets parking
18 on those streets and then going down the street. That's my
19 only place to park and due to certain familiarities with
20 that it makes it hard.

21 So I don't know if I'm getting off topic or not,
22 but if it has to do with skateboarding at Balzer Park, I
23 think maybe it should be extended. I don't know, I guess I'm
24 kind of off topic.

25 CHAIR TALESFORE: It's all right. Any questions?
Commissioner Micciche.

1 COMMISSIONER MICCICHE: As a skateboarder, if you
2 were going to the park to skateboard, would you race across
3 the crosswalks still?

4 BRIAN BURRIS: No, but going down that street it's
5 a very, very steep hill. Going down that hill you're going
6 to create a lot of accidents. There's going to be a lot of
7 people, especially bikers, because that's a big main way for
8 park for the bike riders, you know what I mean?

9 COMMISSIONER MICCICHE: Mmm-hmm.

10 BRIAN BURRIS: And for the most part it could
11 create a lot of little problems just due to people going
12 down that street, skaters just jetting down the hill to get
13 to the park. I think Vasona I guess is a part of the county
14 or something like that, but if it was someplace like that, a
15 bigger area, you know, a different location, in my opinion I
16 just think maybe like you're saying, it wouldn't hit people
17 who were going across the crosswalk.

18 COMMISSIONER MICCICHE: Thank you.

19 CHAIR TALESFORE: I have a question. You're a
20 professional. If you were to come down that hill, how do you
21 stop? And what happens to your board?

22 BRIAN BURRIS: All the wheels now, they're all
23 made of polyurethane; they're not made of clay, they're not
24 made of steel anymore, and some are even made of other
25 materials which I don't even know what they're called. But
when you go down the hill usually you have to stop with what

1 we call a power slide. So you just jam your board sideways
2 and all four wheels don't turn the way that they're supposed
3 to turn, so like I said, if you're trying to go down that
4 hill to stop, there's a good chance you're going to slip out
5 and hurt yourself if you're not professional or if you're
6 not skilled enough to do that.

7 CHAIR TALESFORE: And is that a skill the way you
8 just described this stop? I don't know if it has a name.

9 BRIAN BURRIS: Yeah, all skaters know what it is.
10 It's called a power slide.

11 CHAIR TALESFORE: So is that something that all
12 skaters learn?

13 BRIAN BURRIS: In the long run, yes. But from the
14 get go it takes a long time for a skater to learn that sort
15 stuff.

16 CHAIR TALESFORE: Okay, thank you. That was my
17 question. Thank you. Any other questions? No. Thank you.
18 Aaron Bean.

19 AARON BEAN: Hi there. Good evening. I'll try to
20 be brief and I'll try to save some of these comments for the
21 Town Council meeting since they're not necessarily
22 appropriate to tonight's agenda. My name is Aaron Bean. I
23 live at 354 Johnson Avenue in Los Gatos, which is now
24 effectively currently part of the Los Gatos Skatepark by
25 going down the street at a high rate of speed.

1 The bottom line is the Town needs a skatepark.
2 We've got the funds to do it. We've got a great location to
3 put it in. Although I can appreciate the previous speaker's
4 comments, the location is really excellent. You can get to
5 that park of Town via the Creek Trail and a handful of
6 surface streets that are low impact. The bottom line is just
7 what Mr. Korb said, we need to give this thing a little more
8 time, it needs to develop.

9 I've been skateboarding myself for about 25 years
10 and I would use the park myself, and my kids certainly would
11 as well. You know, it's not about whether to build it or
12 not, we won't get into that, it's about whether we need to
13 give this things some more time to develop. I think we
14 should. I believe the decision is not even to be made
15 whether or not we should the location; it's simply to
16 continue what we've already decided we shall continue.

17 Last but not least, we've had a lot of talk about
18 used sports facilities. You know, we don't have a lot of
19 acreage in Los Gatos. We do have the ability to put this
20 into effect. Let's give it a chance to come to fruition.
21 Thank you.

22 CHAIR TALESFORE: Okay, thank you very much. All
23 right, Phil Knopf.

24 PHIL KNOPF: Thank you, Madam Chair and members of
25 the Commission. My name is Phil Knopf, East Vineland Avenue.
Three years ago when the Conditional Use Permit was issued

1 the Town was to provide the land and the skateboard
2 community was to raise the private funds for the
3 construction. Last year an extension was granted to the
4 skateboard community to continue to raise private funds to
5 complete the project. Now the skateboard community wants an
6 extension to get the Town to provide funds for the
7 construction of the skateboard park. I feel this is a change
8 in the Conditional Use Permit with funding going from
9 private to public.

10 Also, when the parking element was addressed and
11 the survey done that was three years ago. Since then the
12 parking conditions have changed greatly. Many times on
13 weekends and during the summer the lot is full. I feel the
14 parking element needs to be reevaluated.

15 For these reasons I feel the request for an
16 extension of the Conditional Use Permit be denied. Thank
17 you.

18 CHAIR TALESFORE: Okay, thank you very much.
19 Commissioners, questions? None. Rick DiNapoli, followed by
20 Judy Holcomb.

21 RICK DINAPOLI: Good evening, my name is Rick
22 DiNapoli and I'm here to request that you deny the extension
23 of the Conditional Use Permit based upon a change of
24 conditions that have changed significantly since the initial
25 use permit was issued in 2002. Most significantly it's been

1 the expansion of the Town Corporate Yard with heavy vehicles
2 traveling up Miles Avenue.

3 Placing a skatepark at the foot of a hill while at
4 the same time increasing the city traffic and trucks going
5 up that hill is to put it politely, troubling, and the
6 results can be catastrophic. For those who may dismiss this
7 possibility, I'd like to show you that it does happen. They
8 do skate down that hill and they do encounter vehicles.

9 I'd also like to point your attention to an
10 article in the San Jose Mercury News dated August 28, 2007,
11 on a report of a 13-year old boy skating down a steep hill
12 in San Leandro and was killed. That hill, 165th Street, is
13 the top. From the top down, bottom up. Here's Miles Avenue,
14 top down, bottom up. Not a lot of difference. At a minimum
15 this Commission should immediately put in no skateboarding
16 down Miles Avenue, and I'd prefer Edelen as well.

17 Your parking report is completely deficient.
18 You've got a parking report that basically is during the
19 workday when this is an overflow lot. Had they gone out
20 after 5:00 o'clock after the report, they would have seen a
21 little different parking lot, completely filled with people
22 attending baseball games.

23 In addition, I'd like to offer other dates where
24 the parking lot is used. Each one of these is off-hours, and
25 for those of you who may say oh, there's only 12 there,

1 that's as many samples as were contained within your
2 deficient parking report.

3 I'm told, and I hope it's not true, that the
4 Planning Commission at the initial approval determined it
5 could not take into account the safety of the access road.
6 Safety is the primary issue and there's no way to mitigate
7 that issue, except to do what Dennis Byron asked me to do in
8 June after I'd stood here in the Council meeting, and that
9 was to call him, to meet with him, to help him find an
10 alternate location. I've called. I'm ready to meet, Dennis.
11 You just have to return my call. Thank you.

12 CHAIR TALESFORE: Okay, thank you very much.
13 Questions, Commissioners? None. Thank you very much. Judy
14 Holcomb, and then the next group of speakers would be Lynn
15 Kennedy, Timothy J. Murphy, Stan Iversen, Pamela Murphy, and
16 Lois Anderson.

17 JUDY HOLCOMB: My name is Judy Holcomb and I live
18 at 210 Edelen Avenue. I am not in favor of the park as some
19 of the people have talked about before.

20 I teach in Los Gatos and I'm definitely for kids,
21 definitely want a skateboard park somewhere in Los Gatos,
22 but not at the foot of Miles Avenue for the safety reasons
23 that other people have already talked about. I'm just
24 keeping it brief, but that's my feeling. Thank you.

25 CHAIR TALESFORE: This was about the extension,
not in favor of the skateboard park. Just a reminder.

1 JUDY HOLCOMB: Right. I'm supporting what Mr.
2 DiNapoli has said.

3 CHAIR TALESFORE: All right. Thank you. Okay, Stan
4 Iversen.

5 STAN IVERSEN: Madam Chair, members of the
6 Commission, my name is Stan Iversen. My wife Linda and I
7 reside on Edelen Avenue. We're opposed to the location of
8 the skateboard park on the Miles Avenue parking lot site. We
9 also contend that the parking study was flawed. It didn't
10 consider the use of that parking lot during peak periods
11 such as during Jazz on the Plazz, and certainly I don't
12 think it evaluated correctly the holiday use when shoppers
13 take the shuttle bus from the parking lot to patronize
14 downtown business.

15 There are other aspects that have been mentioned,
16 and that is that the Town has extended the use of the
17 Corporation Yard, which has added traffic, it's added a lot
18 of very heavy truck traffic, and also there have been
19 extended uses for Old Town's use permit, at least on two
20 different occasions, which have added demand for that
21 parking. The use for the Creek Trail hikers and bikers has
22 increased and I think that we should deny this permission to
23 extend the use permit and I think the use of the Miles
24 Avenue parking lot, its highest and best use is to remain as
25 a parking lot. Thank you.

1 CHAIR TALESFORE: Okay, thank you. Pamela Murphy.
2 Oh, I'm sorry, was it Lynn Kennedy? No, that's right.

3 PAMELA MURPHY: I'm Pamela Murphy. I live at 129
4 Edelen Avenue, on the corner of Miles and Edelen.

5 I have to tell you how much the conditions have
6 changed since you have approved the skateboard park. We see
7 a major truck volume, back and forth, up and down that
8 street. We see skateboarders in and out of our street. Just
9 the anticipation of the skateboard park has increased the
10 skateboarders and it is the scariest situation that you've
11 ever seen in your life. The skateboarder told you earlier
12 that you have to put on your full brakes to even stop that
13 skateboard. You are asking for a tragedy if you continue
14 with this CUP. Thank you.

15 CHAIR TALESFORE: Thank you very much. Lois
16 Anderson.

17 LOIS ANDERSON: Good evening, my name is Lois
18 Anderson. I've lived on University Avenue for the past 30
19 years. I have two grown daughters. I've been very involved
20 in the community and athletics, and they've even
21 skateboarded a little bit at times when they had time for
22 it, but I guess I also want to deny the use of the
23 extension. The parking bothers me. The danger. The noise.
24 Everything. So I guess I'm getting off, but I'm in agreement
25 with them. I'm hoping that we don't extend it. So thank you
very much.

CHAIR TALESFORE: Okay, thank you. Questions,
Commissioners? All right. Now Lynn Kennedy.

LYNN KENNEDY: Thank you. I'm Lynn Kennedy. I live
on University Avenue, and I request that you refrain from
extending the CUP for the park. I'll reiterate a couple of
reasons I've heard.

The skatepark is not a suitable use for the
property on Miles Avenue. The lot is a natural amphitheater
in close proximity to a history residential neighborhood.
The decibel level of skateboarding may not exceed maximum
sound levels, but the quality of the noise by the park will
be a significant nuisance to the neighbors and detrimental
to property values. The noise will sweep up the hillside
into decks, into yards and homes, making it difficult to
socialize or concentrate. I lived next to an abandoned
school taken over by skateboarders and know firsthand the
scraping, grating sound of incessant boarding wears quickly
on the nerves. Think of fingernails on a chalkboard over and
over and over again.

Also access to the park from the Los Gatos Creek
Trail will increase congestion on a narrow portion of the
trail that already requires weaving in and out of gates and
crossing Miles Avenue. I often observe families with
strollers and kids on bikes and trikes and scooters having
trouble negotiating this area. It would be dangerous to add
a crush of people at the skatepark entrance to the growing

mix of trail users, and such congestion could discourage
trail users from recreation.

Brad, I believe it was, mentioned the steep hill
down Miles before and including the Creek Trail crossing. I
completely agree with the dangers. I've been biking to the
trail when I was passed by two skateboarders having a race
going down the hill. Fortunately I can control my bike and
nothing happened, but it certainly could have.

The current use of the property as a parking lot
is appropriate and necessary. I echo Mr. DiNapoli's thoughts
and I'll pass around some photos too. We had the same idea,
I guess. When I use the trail to go shopping and run
errands, I usually see that lot quite full. This Sunday
there were 25 cars parked, which is shown in my pictures.
The studies from up to 3:00 o'clock make no sense for this.
Similarly, speaking of 3:00 o'clock, school lets out around
then. It's the time that the trucks come back from the day
of work, school lets out, and the kids are going to be going
there, and I have to agree with the folks there that say
that this is a bad recipe.

A skatepark needs to be located in a non-
residential area and in an area with safe ingress and egress
and free of attractive nuisances. The Miles lot does not
meet these criteria, and the loss of the trailhead and
overflow parking cannot be easily mitigated. The parking lot
in question is nicely paved and well lit. It's safe and it's

1 convenient. The street parking is too far away and it's dark
2 and it's unsafe to unload your car. Thank you.

3 CHAIR TALESFORE: Thank you very much, and could
4 the minutes please reflect that we were handed photographs
5 from the speaker? Thank you. Okay, Michael Calise, and while
6 he's coming to the mike, would the next set of speakers
7 please come over to this part of the room and get ready?
8 That would be Christine Currie, Kelly Dougherty, Elizabeth
9 Veazie, and Karen Deloumi.

10 MICHAEL CALISE: Hi, my name is Mike Calise. I
11 live with my family, Donna, my wife, and my two children,
12 nine and six years old daughters who skateboard. I live on
13 247 Edelen Avenue and I would like to go on record saying
14 that enough is enough, folks.

15 The funding momentum for this private sector has
16 been anemic to get this approved. The extension has gone
17 literally nowhere. We're all wasting our time here. There's
18 a clear sign in the community that does want this to occur.
19 You know, there's this debate about, with due respect to
20 some opinion, that skateboarding needs a safe place to
21 happen. That's confusion and blindness behind that argument.
22 I would like to suggest that skateboarding is both an
23 extreme sport and a means of local transportation, and one
24 does not obviate the other, and we need to consider that.

25 So I would like to make the statement that it is
ludicrous to continue, to waste taxpayer money, to waste the

1 time and effort of all involved, and we should kill this in
2 its tracks before we kill something else. Thank you.

3 CHAIR TALESFORE: Christine Currie.

4 CHRISTINE CURRIE: Good evening, Madam Chair and
5 Commissioners. My name is Christine Currie. I reside at 117
6 Broadway.

7 I have two short guys, five and seven. They love
8 to do nothing but get on that crazy skateboard and go as
9 fast as they can. But what I want to talk to you about
10 tonight is the Town Code of Los Gatos, the Municipal Code
11 Section 19.30.020, Subheading 1, refers to the public
12 health, welfare, and safety. Now I can tell you, I've had my
13 kids down this hill, and I don't care how much Mommy's
14 screaming and please don't do it, they're going to do it,
15 and those multi-axle trucks coming out of the public works
16 right across the street from the proposed spot, I'm going to
17 say just please, please, please deny this, because I think
18 there's a spot here somewhere in our lovely community for
19 this park, but it's not at 41 Miles Avenue.

20 The other thing I wanted to bring up to you was
21 Section 29.20.325, also part of our Municipal Code, which is
22 the Town Code of Los Gatos, and that reads on Subsection (2)
23 that the conditions originally applied or new conditions to
24 be applied as part of the extension cannot have changes to
25 safety or changes to the impediment of granting a new
application. So basically in legalize, and I'm just a mom,

1 so I'm going to guess that that means anything that is
2 safety related that is a change in the venue or the change
3 of the wording, then it needs to be maybe a brand new
4 application. So just wanted to give you that as my sort of
5 top of the mind mommy awareness.

6 And then I'd like to just add one tiny thing
7 that's kind of still on the same page, and that's the
8 political hot potato that you have. There's been a lot of
9 presumptions about the money being raised for this, or that
10 the money is already in-hand. Let's all not forget that the
11 money is not in-hand, so I don't appreciate as a taxpayer to
12 be strong armed into a February initiative, but I know
13 that's another issue, so I'm pleading with you as the
14 representatives of our lovely town to deny this. Thank you.

15 CHAIR TALESFORE: Thank you. Do we have a
16 question? No. Okay, Kelly Dougherty, followed by Elizabeth
17 Veazie.

18 KELLY DOUGHERTY: Thank you. My name is Kelly
19 Dougherty. I reside at 321 University Avenue with my
20 husband; we've lived there for ten years.

21 I don't have to go through everything that
22 everybody else just said, because I am also against the
23 extension of the use permit for all the reasons that have
24 been mentioned, mostly safety and the location of this park.
25 I'd love to see it located somewhere else. Thank you.

1 CHAIR TALESFORE: Thank you very much. Okay,
2 Elizabeth Veazie.

3 ELIZABETH VEAZIE: Elizabeth Veazie. I reside here
4 in Los Gatos and I have been very much involved in the whole
5 process prior to the commitment from the Town Council to
6 look at the site that we're discussing this evening, so I am
7 for Miles Avenue.

8 I realize that many people here have the concerns
9 of that hill, although I'm taking into consideration that we
10 worked closely with two amazing people, and that was Pamela
11 Jacobs and John Curtis, and I feel like their commitment and
12 their management skills here in the Town, and providing the
13 opportunity for other things that were built, if their
14 concerns were concerns that people are bringing to our
15 attention this evening, it would have been stopped or not
16 even considered at all, and I trust their judgment. They
17 were there when the children were coming to them and they
18 were bringing their ideas. We did bring our concerns. They
19 ran tests.

20 There was a lot to take into consideration, and it
21 has been a long time, and I would really like to see this
22 move forward and that this project be considered and
23 extended, because I'm putting my trust in those people who
24 were there with us at the time when we had a site visit and
25 we encouraged the public to come out and speak about these
concerns, and I was at every one of those meetings.

1 CHAIR TALESFORE: Thank you very much. Okay, the
2 next round of speakers is Karen Deloumi, Randi Chen,
3 Elizabeth Stewart, Joe Kapp, Don Perry. If you would all be
4 ready to jump up. Okay, Karen.

5 KAREN DELOUMI: I'm here to provide an update
6 regarding the progress of the Skatepark Fundraising
7 Committee. Over the past year many active, passionate
8 community members have put in hours of hard work after
9 working their regular jobs. Why? To provide a safe
10 environment for the Town's youth. We understand the wide
11 breadth of benefits for your youth, citizens, and community,
12 and some adults as well.

13 Regarding efforts, this is truly a grassroots,
14 community-driven, team effort. We are not perfect. We've hit
15 many bumps, no pun intended, but our only motivation is the
16 kids. Not politics, not anything else. I'm excited to
17 provide you with an update on this past year's efforts.

18 First, nothing has changed in regard to the Miles
19 Avenue location. What has changed? Young and old community
20 members rallied to provide a large number of small
21 donations. The fund for the Town now has \$15,000
22 approximately, up from \$7,000 last year. Pledges in writing
23 that the Town does not have are as follows: \$50,000 in
24 matching contributions from Sobrato; a \$10,000 donation of
25 cement; another \$3,000 in cement discounts; offer of all
materials at costs, conservatively worth \$30,000 dollars;

1 offer of all labor at cost, worth conservatively \$30,000;
2 other offers of free labor, not in the value totaled below,
3 and the offers of labor can only be used if worked closely
4 with the Town. We do have a general contractor on board. We
5 have another \$2,000 to \$5,000 in cash pledges; a pledge of
6 all CVC. We're not sure of the value at this time, but
7 there's plenty. The \$125,000 from the Town of Los Gatos;
8 \$100,000 from Monte Sereno. This totals up to approximately
9 \$368,000 conservatively. Estimated cost of the park? Between
10 \$750,000 and \$850,000. Gap: \$400,000.

11 Funding notes: Gap could be funded with
12 redevelopment funds. Town must spend this money or lose the
13 dollars. Funding never part of the Town budget. Funding
14 never a tax increase. Town has the money. We have been
15 turned down for grants and corporate donations, because our
16 Town reserves and per capita income are very high. Most
17 parks are funded by towns that value youth and consider
18 themselves youth-friendly. Low per capita towns have gotten
19 skateparks well before us.

20 The ballet measure has enough signatures to
21 quality for the ballet. On November 5th the Council can
22 choose to either just pass it or to delay it and have it go
23 to the ballot.

24 Other items: Additional funding efforts are in the
25 works. One of them possibly could bring in another \$30,000
to \$60,000. Bottle drive that the community can participate

1 in, but skateparks are not built with bake sales and bottle
2 drives, yet another funding event is also in the works.

3 CHAIR TALESFORE: Thank you very much.

4 KAREN DELOUMI: Could you read the closing?

5 CHAIR TALESFORE: Okay, wait a minute. Any
6 questions, Commissioners? Seeing none, thank you, but would
7 the minutes please reflect that we had a handout from this
8 speaker. Thank you very much. Randi Chen, followed by
9 Elizabeth Stewart.

10 RANDI CHEN: Hi, I'm Randi Chen and I live at 118
11 Edelen Avenue, and I don't think you should extend the CUP.
12 Three-and-a-half years is a long time to try and raise
13 money. I know it is very difficult; I try to raise it for
14 the schools every year and it is just really hard to come
15 by. But three-and-a-half years is a long time and it's not
16 really anywhere close.

17 The EIR is outdated. There is a lot more truck
18 traffic, and it was three-and-a-half years ago and I have to
19 believe that conditions have changed since then.

20 Your parking study was conducted in March and
21 August, not during Little League, not after school when the
22 skateboard park would be used, not during the holiday season
23 where people park and walk up, not during Jazz on the Plazz,
24 so I think that needs to be redone, and for those reasons I
25 don't think you should extend the CUP.

CHAIR TALESFORE: Thank you very much.

1 RANDI CHEN: And Phil, the Red Sox were winning
2 when I walked in.

3 CHAIR TALESFORE: We appreciate all updates. Okay,
4 Elizabeth Stewart, followed by Joe Kapp, and then Don Perry.

5 ELIZABETH STEWART: My name is Elizabeth Stewart.
6 I live at 124 Edelen Avenue, and I don't have a lot to add.
7 I think everyone has ready said it and said it beautifully.
8 I do also wish to be on the side of those who are opposed to
9 the skateboard park there.

10 I know there is so much passion, and you heard it
11 tonight from those who really, really want this park.
12 However, since the Town has already looked at at least 20
13 other sites and dismissed them all, I think that if this is
14 the best that we have to offer, we need to go back to the
15 drawing board and find something that will really make
16 everyone happy.

17 There are so many issues. There's safety. There's
18 financial. There's liability. There are all kinds of issues
19 here to be faced, so because of those reasons I really have
20 to be on the side of those who are opposed to this park.
21 Thank you.

22 CHAIR TALESFORE: Thank you very much. Joe Kapp,
23 and then Don Perry. You don't have to use all three minutes.
24 Not that we don't want to hear from you, but if you've
25 already heard it being said, you could just say you've heard
it.

1 JOE KAPP: I don't think anybody appreciates
2 sports more than I do, it's been my life, and I wish
3 skateboarders find the right place for them. But I've lived
4 on Edelen Avenue with Jennifer and my three children, and
5 this is common sense, if any of us have any, to just go down
6 to Miles, and take the information that you've heard here
7 tonight.

8 Somebody's going to get hit, even the way it
9 exists now. They're going to get hit. You got a walkway
10 there. You got a steep hill going down. It's really
11 dangerous. Mr. Calise, our neighbor, says kill this effort
12 here, and that's correct, because somebody's going to get
13 killed on that street.

14 I've been here 20 years, the longest I've ever...
15 I've been a migratory football worker. And I've been in
16 Canada, Minnesota, Boston, Moose Jaw, Swift Current, all of
17 those places. This is not the right place to put it. And I
18 love sports. I gotta love it.

19 And the traffic isn't just right there. You turn
20 in to come in on University Avenue, like we have citizens
21 here from University Avenue. I'd been living here two years
22 and I get hit out there on that street. I mean I was
23 thinking maybe Los Gatos doesn't want any Mexicans in town
24 here. But I got hit there, and so the traffic isn't just
25 right there at the bottom of Miles, it's the entrance to the
City, and this is a great city, believe it or not.

1 So I vote turn them down. They gotta go find
2 another spot. Level ground. I mean you can't do it on this
3 hill. It's dangerous. I invite all of you to come and join
4 us and we'll look at that street. There are no stop signs.
5 They got no brakes on those things, you know? Any questions?

6 CHAIR TALESFORE: Thank you. Questions.

7 JOE KAPP: Thank you, and thank you for serving
8 the city here. We appreciate it.

9 CHAIR TALESFORE: You're welcome. And for the
10 record, could it reflect that I'm sure that my fellow
11 commissioners join me, but we all do believe this is a great
12 town. Thank you. Don Perry.

13 DON PERRY: Good evening. As you know I'm on the
14 City Council in Monte Sereno, so for the record I am not
15 here in any official capacity. On a personal note I have two
16 children, ages seven and nine, and for your findings this
17 evening I know my kids would like very much to skate at a
18 skatepark and I would encourage you. I know there are a lot
19 of hoops that still need to be jumped through before the
20 park becomes a reality, but to move it along and see if
21 those hoops can be jumped through, I would encourage you to
22 make the findings tonight to make the extension. Thank you.

23 CHAIR TALESFORE: Excuse me, would you please wait
24 at the podium. Thank you. We have a question from Vice-chair
25 Kane.

1 COMMISSIONER KANE: Councilperson, Monte Sereno
2 has a lot of open space.
3 DON PERRY: Where?
4 COMMISSIONER KANE: Where?
5 DON PERRY: Which open space would you be speaking
6 of?
7 COMMISSIONER KANE: Starting at one end, going to
8 the other.
9 CHAIR TALESFORE: Okay, thank you.
10 DON PERRY: Is that a question?
11 COMMISSIONER KANE: No.
12 CHAIR TALESFORE: Thank you. Okay, here's the next
13 group of speakers. Lori Baker, followed by Mona Voss,
14 followed by John D. Voss, followed by Julie DiNapoli,
15 followed by Dennis Byron. Thank you, and if you would all
16 come over to that side of the audience I'd appreciate it.
17 LORI BAKER: Good evening, Madam Chair, and
18 Commissioners. My name is Lori Baker and I'm a homeowner at
19 252 Edelen Avenue. I've been living there about three years
20 now, and I am a supporter of the skatepark but am against
21 the extension of this Miles Avenue location.
22 Conditions have changed and there are three areas
23 of concern where I see the conditions have changed: areas
24 around parking, noise, as well as safety.
25 So to start with the parking, the Miles parking
lot is an asset to our community. It is an area where we

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1 welcome other people from other neighborhoods to come and
2 take part of our holiday parade, Jazz on the Plazz, and take
3 advantage of our shopping and restaurants. Since this was
4 put in place we've had 373 signatures from people in the
5 community as well as merchants saying that this is a
6 valuable asset that we need to protect. So the conditions
7 have changed around parking.
8 Around the noise. Having lived in the neighborhood
9 for a couple of years now, I've noticed in the last six
10 months the amount of skateboard traffic has increased
11 dramatically along with the amount of truck traffic, and I
12 can share with you that skateboarding is not a quiet sport.
13 So when skateboarders are going down the street I can hear
14 them in my home, and I can only imagine the volume of noise
15 that will occur when we build a large wooden ramp for
16 skateboarders to come to en mass in our backyard. So again,
17 I would ask the Commission to consider this as a condition
18 that has changed. We're seeing the volume of skateboarders
19 go up and this noise level will be a detriment to the
20 quality of life in our community on Edelen Avenue.
21 And then finally on the area of safety, I'd like
22 you to consider the fact that this has changed around the
23 amount of trucks we have going up and down Edelen today.
24 Anyone that lives in our neighborhood knows the amount of
25 effort it takes to negotiate in and out of our driveways. We
have blind corners at Bentley. We have a dead end. We have

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1 the steepness of the Miles grade. And I can tell you, it's a
2 daily task to try to get in and out of my driveway without
3 hitting a pedestrian, a bicyclist, a skateboarder, or a
4 truck that's coming around the corner and not used to it
5 being a blind corner that it is. And right now the idea of
6 adding more skateboarding traffic seems reckless and an
7 endangerment not only to the youth, but to the residents in
8 our neighborhood.

9 Again, conditions have changed. So thank you for
10 your consideration. I appreciate the opportunity to be heard
11 here today. Thank you.

12 CHAIR TALESFORE: Thank you very much. Mona Voss.

13 MONA VOSS: Good evening. I'm going to read a few
14 statements of fact relating to Miles Avenue. My name is Mona
15 Voss. I live at 123 Edelen Avenue. I'm currently the
16 Director of Environmental Health and Safety for Foothill-De
17 Anza College. For the prior 25 years I was Director and
18 Vice-president of Environmental Health and Safety for Safety
19 Clean Laidlaw. I am familiar with trucks, accidents
20 investigation with trucks, and environmental permitting.

21 The site proposed for the skateboard park has not
22 had an Environmental Impact Report performed and the site
23 has not had a traffic impact study performed. This proposed
24 site lies at a bottom of a hill. Site access has a
25 pronounced curve. Surrounding roads are used by cars and by
light and heavy service vehicles.

1 Every accident has an immediate cause and an
2 underlying cause, or root cause. There have been multiple
3 skateboard accidents and fatalities in the United States and
4 Canada in the past year. In the last 90 days, 90 days, in
5 just the state of California there have been three
6 skateboard accidents and fatalities.

7 On August 11, 2007 in Marino Valley in Riverside
8 County a 12-year-old boy died after falling off his
9 skateboard and hitting his head. The immediate cause of the
10 accident was failure to wear a helmet. On August 11, 2007 in
11 Menifee/Long Beach, California an 11-year-old girl died
12 three days after sustaining injuries after she lost control
13 and slid beneath a moving vehicle. The immediate cause of
14 the fatality was loss of balance and sliding beneath a heavy
15 vehicle. The underlying cause was skateboarding in close
16 association with vehicles. On August 27th in San Leandro,
17 Alameda County, a teenager died due to head injuries. The
18 immediate cause was a fall without head protection. The
19 underlying cause was the topography, a hill used for
20 skateboarding. Wendy Andrews, she was an eyewitness, says,
21 "I go home that way every night and there's usually a couple
22 of kids at a top of a hill with their skateboards ready to
23 come down, and that's a tragedy. This is an accident just
24 looking for somewhere to happen."

25 The root cause, or underlying cause, for the
California fatalities are skating in close proximity to

1 moving vehicles and skating on unsafe topography. The Miles
2 Avenue property has both traffic in close proximity and
3 unsafe topography.

4 Again, this site has not had an Environmental
5 Impact Report or a traffic impact study performed. We have
6 no verification that this is a safe location for
7 skateboards. Thank you.

8 CHAIR TALESFORE: Okay, thank you, Miss Voss.
9 Anyone have questions? Seeing none, that would be John D.
10 Voss, the next speaker, followed by Julie DiNapoli.

11 JOHN VOSS: Yes, good evening. My name is John
12 Voss. I live at 234 Edelen Avenue and have been a resident
13 of Los Gatos for 40 years.

14 For fear of just being redundant of what's already
15 been said this evening I'm just going to reemphasize the
16 aspects of the safety issues, eliminating public parking,
17 which is a scarce commodity in this town, which could affect
18 retail sales and also tax revenue to the City, the loss of a
19 lot. Also displacement in a Town designated historical
20 district.

21 I would just encourage the Town to find another
22 spot that has a strategic viewpoint of a common recreational
23 facility meeting the needs of the community. Thank you.

24 CHAIR TALESFORE: Okay, thank you very much.
25 Questions? None. Julie DiNapoli.

1 JULIE DINAPOLI: Good evening. I also don't want
2 to sound redundant, but I do feel that I would like to
3 reiterate that there was no traffic study done on this
4 Negative Declaration, and the fact that this is the only
5 street in our town with oversized vehicles and multi-axle
6 trucks. No other way in. No other way out. Including police
7 vehicles. These are our Town employees driving these trucks,
8 and the fact that they may seriously endanger the lives of
9 these kids on skateboards going down Miles Avenue is great,
10 and I do not want to be the person out there that is going
11 to have to pick up a kid off a street when an accident like
12 this happens. So I invite all of you as well to stop by and
13 witness what we witness on a daily basis, and what we are
14 seeing an increase of. The reality of these kids going down
15 Miles Avenue is there.

16 Also, since Los Gatos is most definitely a kid-
17 friendly town and has spent hundreds of thousands of dollars
18 on many programs for our youth, we ask that the Planning
19 Commission do the right thing for our youth tonight and not
20 extend the CUP for that location. Let us place our time and
21 energy on a land usage in a prime location that is safe for
22 all of our kids, and not one that could lead to a fatality.
23 Thank you for your time and everything that you do for our
24 town.
25

1 CHAIR TALESFORE: Thank you very much. And Dennis
2 Byron. Next group of speakers would include Steven
3 Leonardis, Maria Ristow, Susan Farwell, and then Cory Farr.

4 DENNIS BYON: Thank you. My name is Dennis Byron
5 and I live at 455 San Benito Avenue in Los Gatos. I don't
6 want to waste your time. There's a lot of passion on both
7 sides of this issue. I don't want to talk about the 3,000
8 signatures the skateboarders have raised. I don't want to
9 talk about the parking mitigations that we've talked about.
10 I don't want to talk about the safety factors that we wanted
11 to put in place on Miles Avenue and the fact that the
12 entrance to the skateboard park will be on the Creek Trail.
13 As Vice-chairman Kane said, this is a very narrow topic of
14 discussion that we have here.

15 Basically nothing has changed since the last
16 extension of this Conditional Use Permit. There have been
17 parking studies. We've looked at 29 sites, other locations
18 for the skateboard park. This comes down to the best
19 location. Please extend this Conditional Use Permit. Let the
20 Town of Los Gatos decide whether or not this skateboard park
21 goes in. Thank you.

22 CHAIR TALESFORE: Do we have any questions,
23 Commissioners? None. Okay, thank you very much. Steven
24 Leonardis.

25 STEVEN LEONARDIS: I'm Steven Leonardis. I'm a Los
Gatos Skatepark Committee member. I came here tonight with a

1 totally different speech, but after listening to some of the
2 concerns of the Edelen neighborhood, who include teachers
3 and friends of friends, I want to just say some of their
4 concerns can be mitigated. Maybe we should take the street
5 of Edelen Avenue and pave it with cobblestone so
6 skateboarders will not roll down it, because it sounds like
7 whether there's a skatepark there or not there is a safety
8 issue with skateboarders going the hill potentially.

9 Now there are a lot of hills in Los Gatos. This is
10 not the only hill and it's not the only hill that can be
11 considered dangerous, but for lack of a better term, this
12 sounds like a classic not-in-my-backyard argument from the
13 Edelen Avenue and University Avenue residents. The DiNapolis
14 moved to the neighborhood in 2005, about six months after
15 this had been approved by your commission, and they knew,
16 they were aware of the skatepark being in that location,
17 which is in a RDA zone, which is a blighted area. True, they
18 live in a historical district, however this is a blighted
19 area which used to be a recycling area operated by the Town
20 of Los Gatos. We had gone through, as was said earlier, a
21 number of different sites for the skatepark.

22 I'd like to obviously request that the CUP be
23 extended for one more year, because this is going on the
24 ballot in February, and this gives everybody a chance to
25 vote, and it think that's the only democratic way to resolve
this. This is the American Way. Let's continue with the

1 American Way rather than shoot it down this evening because
2 there's passion on both sides of the equation and I have
3 friends on both sides of the fence. Thank you.

4 CHAIR TALESFORE: Thank you. Maria Ristow.

5 MARIA RISTOW: Hi, I'm Maria Ristow. I live at 85
6 Broadway. I have a ten-year-old son who is a skateboarder
7 and a seven-year-old daughter. I've lived in Los Gatos for
8 20 years and I consider this a very walkable town. I walk
9 probably ten times more distance than I ever drive. My kids
10 walk to and from school. We ride our bikes on the Creek
11 Trail from Broadway to get to Vasona Park. My kids have
12 taken camps.

13 I would say that I'm in favor of extending this
14 deadline. I think a lot of points that were brought up:
15 Parking issues have increased everywhere in town. Traffic
16 issues have increased everywhere in town. I don't think it's
17 unique to this site. I don't think anything specific to this
18 site has changed over time.

19 As somebody who has ridden bikes with my children
20 down the trail past Miles Avenue where there is a stop sign
21 for the trucks to stop, we personally have had trucks stop
22 for us when we're about 20' away from that crossing and wave
23 us on. The Town employees are very considerate of people on
24 their bicycles and aware of who is there and what a large
25 truck they're driving. On a weekly basis I or one of my
children have almost been hit by people in SUVs talking on

1 their cell phones. I look at any other part of this town and
2 realize you would have to go across Blossom Hill or other
3 streets where you would have to deal with drivers who are
4 not aware of their hazard to pedestrians.

5 So I think this is an ideal location. I think we
6 need more time to raise money. I think we don't want to kill
7 this skatepark yet. Thank you.

8 CHAIR TALESFORE: Thank you. Any questions? Seeing
9 none, thank you very much for that. Susan Farwell.

10 SUSAN FARWELL: Susan Farwell, 121 Willow Avenue.
11 I'm here to speak to ask the Commission to deny the time
12 extension for this, and the reason why is I feel that it's
13 your responsibility as representatives of the Town of Los
14 Gatos to realize that there have been changes, even over the
15 last year. With the addition of the Apple store alone it
16 looks like there's 15-20 employees in that space on an
17 hourly basis. I believe that with the increase in traffic,
18 even in the past year, definitely in the last three-and-a-
19 half years, that the traffic demands have changed. The
20 parking demands have changed. The skateboarding demands have
21 changed, and I feel it's your responsibility to at least ask
22 for the minimum of a new parking study, a new EIR, and to
23 deny the time extension solely based on the fact that it has
24 changed over the past three-and-a-half years and it has
25 changed over the past year.

1 CHAIR TALESFORE: Thank you very much. Any
2 questions? Seeing none, okay. Cory Farr. And then the next
3 group of speakers would be Jordan Kahler, Heidi Farr,
4 Michael Burke, Tim Murphy, and Tom Calderwood. And I think
5 that will be it unless I get another card. So thank you.

6 CORY FARR: My name is Cory Farr. I live at 337
7 Johnson Avenue, one of the premier downhill skating areas in
8 Los Gatos. We actually put speed bumps on our street, so now
9 the teenagers can come down our street and hit the bump to
10 catch air. Then their little buddy picks them up at the
11 bottom of the hill and brings him back up. So I'm thinking
12 to myself, how could be get these kids off of my street, off
13 of your street, and get them off the streets? Go downtown.
14 People are skateboarding and running into you. Get them off
15 the street and put them at a park. They'd love a park. The
16 park is a perfect place. Then we don't have to worry about
17 them on our streets. These people...

18 (Inaudible comment by audience member.)

19 CORY FARR: God bless you. You live in a great
20 neighborhood, and I love the support, but what you're saying
21 is they're going to come down this hill. No. they're going
22 to...

23 CHAIR TALESFORE: Excuse me. Would you mind
24 addressing your comments to us? Thank you.

25 CORY FARR: They're not going to go down the hill,
they're going to actually go to the skatepark and go in

1 these big pools and stuff to skate, so that way they're not
2 going through the neighborhoods to skate. So I'm definitely
3 in favor of extending it and letting people vote on this
4 subject, for sure.

5 CHAIR TALESFORE: Thank you.

6 RAY DAVIS (from audience): Here, here.

7 CHAIR TALESFORE: All right, Jordan Kahler.

8 COMMISSIONER KANE: Caution him.

9 CHAIR TALESFORE: I don't want any more calling
10 out from the audience. Heidi Farr will be next after Jordan.
11 Thank you.

12 JORDAN KAHLER. My name is Jordan Kahler. I live at
13 226 Edelen Avenue and I'm here to say, very briefly, I've
14 seen the area, it hasn't changed much. There are concerns.
15 Those concerns were looked at, considered very carefully.
16 The optimum place for a skatepark in Los Gatos was
17 determined by this Commission to be the location that's
18 agreed on now. The Town shouldered the responsibility of
19 finance, and the skateboard community, and that is slowly
20 being met. We need the time to do it, and the Commission
21 should give it the opportunity to take place.

22 CHAIR TALESFORE: Okay, thank you. Was that it?
23 All right, any questions? None. Heidi Farr.

24 HEIDI FARR: Good evening, I'm Heidi Farr. I live
25 at 337 Johnson Avenue, and I kept my kids up really late

1 just so they can see the democratic process in action and I
2 think this is well worth for them to watch and experience.

3 Another thing that they need is a skateboard park,
4 and we just need somewhere safe. Come out to our street.
5 Visit our street. That's where they're coming down, and
6 their friends and pulling them back up with their cars. How
7 safe is that? We need a place where they can go and they can
8 be in a safe and well-supervised area. It's got to be in
9 somebody's backyard, and if you'd like to put it on Johnson
10 Avenue, we'd love to have it. We just want it to be enclosed
11 and to be safe and supervised. Thank you.

12 CHAIR TALESFORE: Thank you very much. Anyone?
13 Okay, no questions. Michael Burke.

14 MICHAEL BURKE: Thank you. My name is Michael
15 Burke. I live on University Avenue.

16 The Commission has been shown tonight credible
17 evidence that the parking lot on Miles is being used much
18 more than the Staff Report indicated. This is because the
19 parking lot was not studied when the lot is in use:
20 weekends, evenings, holiday season. This represents a new
21 fact related to the application. To quote the minutes from
22 last year's meeting on the extension, "Mr. Tsuda provided
23 comments that the traffic study indicated that the lot only
24 fills up for special events in the town." Well unless every
25 Saturday and Sunday is a special event, that has changed.

1 Furthermore, new approvals over the past three
2 years need to be taken into account. One such approval is
3 for Old Town's use of the amphitheater and regular special
4 events. That's going to increase the need of that lot.

5 And valid noise and safety issues have been
6 brought up to the Commission tonight. The CUP does not
7 address those issues. We have some misconceptions here.

8 One, these issues have been dealt with before.
9 Three years ago when I sat up there with you I was told by
10 Mr. Korb that it would be inappropriate to add conditions to
11 this CUP because it was being sponsored by the Town Council--
12 check the minutes, Mr. Korb, sorry--because we would be
13 telling them how to run a park that they were going to run,
14 and that was out of our purview.

15 Secondly, replacement parking. There are no
16 lights. There is no sidewalk along Miles. It's farther away.
17 It's not as safe. It's not practical. It's not going to get
18 used.

19 Third misconception. Neighborhoods are protected
20 by permit parking. Permit parking is not actively enforced.
21 Cars park in front of my house all day and don't get
22 ticketed or even chalked.

23 Another misconception is voting against the
24 extension kills a project. No. Just be new conditions added
25 when this comes back to the Council.

1 And I want to talk to you a little bit about the
2 section in the Code on time extensions. I think Mr. Korb has
3 framed this much too narrowly. The Staff Report, Exhibit A,
4 is incredibly misleading. It draws conclusions of fact based
5 on testimony that hadn't even happened yet, and that is very
6 distressing. You know, you hadn't even had the meeting yet
7 and were already saying that no facts have changed. You
8 haven't had the testimony yet.

9 So I would ask you to look at Section 29.20.325 on
10 extensions, and read it for yourself, and see if you are
11 limited to only dealing with facts that have changed. There
12 is nothing in there that says that. It says, "Conditions
13 originally applied or new conditions to be applied as part
14 of the project extension approval are adapted to any new
15 facts of the proposed project." If there are new facts, you
16 need to adopt new conditions. But nothing that says unless
17 there are new facts you have to continue this. Absolutely
18 nothing. Thank you.

19 CHAIR TALESFORE: Any questions of the speaker?
20 Seeing none, thank you very much. Oh, Commissioner
21 O'Donnell, did you have a question? I thought I saw your
22 hand up. Thank you. Okay, Tim Murphy, followed by Tom
23 Calderwood.

24 TIM MURPHY: My name is Tim Murphy. I reside at
25 129 Edelen Avenue, Los Gatos. I'm in the industrial real
estate business as an occupation and I will tell you that is

1 I was in a city where I had a development both myself and my
2 tenants would be very much opposed to putting this type of a
3 use within an industrial park. You've imposed upon me
4 potential liability that I didn't want any part of. I'm
5 driving big trucks; I've got problems.

6 People are trying to sell this, or they're
7 promoting the idea it's a park-like setting because you're
8 next to the baseball park. I go down there and I suggest
9 that you're in an industrial park setting. It's an
10 industrial park, and from the City's standpoint I'd be very
11 concerned about the fact that I am the major tenant and yet
12 I'm also the applicant to bring issues in there. I think
13 you've got to really take a real hard look at that.

14 Having said that, my issue really is the parking.
15 If you read the reports we are told that studies and
16 observations were made initially and have been made since
17 both in August and October of this year, and in one of the
18 reports they talked about looking at the parking from 11:00
19 o'clock in the morning till 3:00 o'clock in the afternoon,
20 Monday through Friday. The conclusion is that the parking is
21 under-utilized. Now I would suggest to you that using that
22 criteria, that if you look at the parking situation at the
23 downtown Safeway store from 11:00 o'clock in the morning
24 until 3:00 o'clock in the afternoon, you would conclude that
25 our Safeway store is overparked, or underparked, or pardon
me, overparked, parking is under-utilized. I would suggest

1 you go back at 5:00 o'clock or 6:00 o'clock and make that
2 same conclusion. It's not going to happen.

3 I've done traffic studies. I've done environment
4 impact reports. When I do those I'm required to look at peak
5 hour. In this case peak hour parking is not Monday through
6 Friday during the day. In August a lot of people are on
7 vacation. It's when there are major events downtown such as
8 events at the high school and heavy retail periods, which is
9 why this was put up there in the first place. I would
10 suggest any of you to look me in the eye and tell me that
11 parking lot is not full during the Christmas parade. That's
12 what it's there for and these uses still exist.

13 I would question if the Staff actually went down
14 and talked to the residents at 31 Miles. This is a 12-unit
15 residential complex that was put in there a few years ago. I
16 did today. One of the residents relayed to me that as he
17 comes back...

18 (Timer sounds.)

19 CHAIR TALESFORE: Would you just please wrap up.
20 I'll give you like 15 seconds.

21 TIM MURPHY: All right. I request that you do not
22 extend this CUP, and if you do that you add as a condition
23 of there be a third party traffic and parking study. You are
24 sitting here with an absolute conflict of interest whereby
25 you're having your Staff, who in fact is the applicant, and
you're accepting their study as part of this submittal. You

1 wouldn't do that for me. You wouldn't let my people do it,
2 so I would request that that condition be added to this if
3 in fact you do extend. Thank you.

4 CHAIR TALESFORE: Okay, thank you. Do we have a
5 question? Two questions. Just a minute. Commissioner
6 Bourgeois had his hand, and then Vice-chair Kane.

7 COMMISSIONER BOURGEOIS: I would just like to hear
8 what the residents at 31 Miles had to say that you were to
9 starting.

10 TIM MURPHY: He said that he has on numerous
11 occasions when there are major events downtown has come home
12 to find that there's no parking available within his
13 complex. He has to find someplace else to park. And this is
14 at the furthest end of Miles as you can get.

15 CHAIR TALESFORE: Vice-chairman Kane.

16 COMMISSIONER KANE: That was my question.

17 CHAIR TALESFORE: Okay. Thank you very much. Tom
18 Calderwood.

19 TOM CALDERWOOD: Tom Calderwood, 193 Mary Alice.
20 Been in Los Gatos since 1960. I'll just talk to a few
21 points.

22 The parking thing, I was curious about that.
23 During the month of July I visited the Miles Avenue area 15
24 times. Parking utilization ranged from 7% to 22%. I went
25 during the weekends, morning, the afternoons, dusk, so I
went at all different times. Just another data point.

1 On the issue of safety, hills are all over Los
2 Gatos. Kids will skateboard down hills. They ride bikes down
3 hills. They drive fast when they become teenagers. It's is
4 what it is. I really think that putting in the skateboard
5 park will help kids be safer rather than increase safety
6 risk. I think we'll end up with a safer condition rather
7 than making it worse.

8 The final thing is to me it comes down to there's
9 views from both sides. Let the democratic process work. Get
10 it on the ballot. Let people vote on it. I think in any
11 neighborhood there is going to be split opinions about it.
12 Let the voters decide. Thanks.

13 CHAIR TALESFORE: Okay, questions, Commissioners?
14 None. Well, we are at the end of our speaker cards and I'm
15 sure my fellow commissioners would join me in thanking all
16 of you for participating in the public process tonight. You
17 make all of us proud, so thank you.

18 And with that I'm going to close the public
19 hearing. I will turn it over to the Commission now for a
20 motion, for discussion, questions of Staff, and I'll take
21 Commissioner Micciche first, and then followed by
22 Commissioner Rice.

23 COMMISSIONER MICCICHE: I thought this thing was
24 going to be pretty straightforward tonight, because I was
25 looking for something that said there were no changes. So
I've got a question of Staff here that says given that we

1 were shown pictures that that parking lot has been filled
2 and a substantial amount of evidence that said it's used
3 quite a bit, does that constitute a change from the original
4 study?

5 ORRY KORB: Well I'm not going to tell you that it
6 does. It's up to the Commission to decide whether it does.

7 COMMISSIONER MICCICHE: Okay.

8 ORRY KORB: I'm going to tell you that you do get
9 to consider testimony of perspective changes to the
10 conditions in your determination.

11 COMMISSIONER MICCICHE: Okay. The second question
12 then may be the same answer, is that since the truck traffic
13 has changed considerably and safety is an issue in the
14 Conditional Use Permit, does that constitute a change in the
past three years?

15 ORRY KORB: Same response.

16 COMMISSIONER MICCICHE: Same response.

17 ORRY KORB: It's up to the Commission to decide.

18 COMMISSIONER MICCICHE: So it's up to the
19 individuals based on the evidence we've seen. Okay.

20 ORRY KORB: It's up to you as individuals to
21 decide for yourselves and then as the Commission as a group
22 to convince each other whether changes have occurred.

23 COMMISSIONER MICCICHE: And Madam Chairperson?

24 CHAIR TALESFORE: Yes?
25

1 COMMISSIONER MICCICHE: There was evidence that
2 was shown on the screen tonight of that parking lot being
3 filled. There was a number of pictures.
4 CHAIR TALESFORE: Yes.
5 COMMISSIONER MICCICHE: So I wonder if that could
6 be entered and shown again to the Staff by the individual
7 that showed it?
8 CHAIR TALESFORE: Oh, was it not left for our
9 record? It was not.
10 COMMISSIONER MICCICHE: I think it was Mr.
11 DiNapoli that had it.
12 RICK DINAPOLI: I had four.
13 COMMISSIONER MICCICHE: No, no, he had some other
14 ones.
15 CHAIR TALESFORE: He had other pictures. Could I
16 open the public hearing? How do I do this? I just ask. Could
17 I just have the picture?
18 ORRY KORB: If we can just get the picture and put
19 it up on the...
20 CHAIR TALESFORE: Thank you.
21 ORRY KORB: And I think if you could leave that
22 picture for the record, and any other pictures you brought
23 in that you referred to.
24 RICK DINAPOLI: Gladly.
25 COMMISSIONER MICCICHE: I can't see the dates on
that though. Can we make that clearer, or could you...

1 RICK DINAPOLI: I could... I'll read..
2 CHAIR TALESFORE: We'll have our Staff..
3 COMMISSIONER MICCICHE: We'll have our Staff do
4 it.
5 CHAIR TALESFORE: Thank you.
6 RICK DINAPOLI: These are the four things that
7 I've shown.
8 CHAIR TALESFORE: Okay, hand them over to Mr.
9 Parsons. Thank you. Okay, Mr. Micciche, you would want?
10 COMMISSIONER MICCICHE: I just wanted to
11 understand the dates that those were taken.
12 CHAIR TALESFORE: Can you read the dates to us?
13 RICK DINAPOLI: I can. They were from May 2007 to
14 July 2007.
15 COMMISSIONER MICCICHE: Okay, thank you. That's
16 all I had for right now.
17 CHAIR TALESFORE: Thank you, Commissioner
18 Micciche. Commissioner Rice.
19 COMMISSIONER RICE: It was covered. Thank you.
20 CHAIR TALESFORE: Commissioner O'Donnell.
21 COMMISSIONER O'DONNELL: Obviously there is a lot
22 of emotion. I'm going to share with the Commissioners my
23 initial analysis, so I'd invite your comments on it.
24 It is not enough, I don't believe, that one could
25 disagree at this point with the Negative Declaration,

1 because the time to attack the Negative Declaration is long
2 gone.

3 The photos I've seen shows that perhaps the
4 Negative Declaration was wrong, perhaps it wasn't, I don't
5 know. You would need evidence that there was a change of
6 circumstance since the Negative Declaration, and we're being
7 asked for something where that becomes relevant.

8 So at this point I think to deny the extension is
9 a very drastic act, because it does rob the electorate of
10 the chance to do—I think, perhaps something could be done to
11 it—but it seems to rob the electorate of a chance once and
12 for all I think to decide this.

13 And I think we have to be careful and perhaps need
14 some legal help here, not in ultimate facts, I'm not doing
15 that, but for example the suggestion was that Mr. Korb had
16 made factual statements when of course that's not true at
17 all. On Exhibit A what he said was before granting an
18 extension the deciding body must find from the evidence, and
19 he stated the two things. He didn't say those were true. He
20 simply said you must find those, otherwise you can't grant
21 the extension. So I would like to correct the record on
22 that.

23 But the way I view this again is if we find that
24 there's credible evidence that says either the Negative...
25 Well, we can't attack the Negative Declaration, it's over
and done with, but since the determination. A part of our

1 problem tonight is we don't have the Negative Declaration in
2 front of us, we haven't reviewed the Negative Declaration in
3 those years, but we need evidence not that somebody's
4 parking there, but that somebody wasn't parking there when
5 the Negative Declaration was originally done. I haven't
6 heard that.

7 So I guess I'm concerned not because I'm not
8 sympathetic with both sides on this, but I am saying what is
9 our job here? We adopted a CUP after doing the CEQA
10 requirements, after adopting a Negative Declaration, and if
11 we have to revisit this every time, we have fairly narrow
12 constraints, and the constraint is have the facts changed?

13 In the first place, photographs I've seen haven't
14 shown the parking lot full. They've shown some cars in the
15 parking lot more than we've been led to believe on some
16 occasions. On the other hand we heard a testimony from a
17 gentleman who was there 22 times, or whatever it was, and
18 his observations were consistent with the Staff's supposed
19 observations for the Negative Declaration.

20 So I'm just saying the way I look it is if this
21 Commission can say the facts have changed since the Negative
22 Declaration, perhaps we should indeed deny the extension.
23 But I just want to be very careful that it isn't enough that
24 you say gee whiz, there are cars there. What you want to
25 know if have the cars changed from the time we adopted the
Negative Declaration?

1 And as far as the downhill problem is concerned, I
2 agree with everybody who said hills are a problem with
3 skateboards, and whether we put the park here or somewhere
4 else is not going to cause the skateboard riders not to go
5 down hills, and putting a skateboard on a flat surface seems
6 to be somewhat of a contradiction in terms. So I think that
7 if in fact the speakers are correct that nobody wants this,
8 then it will be denied at the ballot box. If in fact it's
9 Edelen that doesn't want it, then perhaps it won't be. So I
10 just throw that out for discussion purposes.

11 CHAIR TALESFORE: Thank you, Commissioner
12 O'Donnell. That's giving us a lot to think about and
13 probably some of us were thinking that. Commissioner Rice,
14 Micciche, and then Bourgeois. I think that was in order.

15 COMMISSIONER RICE: I'm just curious, do we have a
16 copy of the Mitigated Negative Declaration available?

17 RANDY TSUDA: We have a copy in the file.

18 COMMISSIONER RICE: Because for me to determine
19 whether or not there was a change would be kind of difficult
20 since I wasn't on the Commission when it was originally
21 passed and I never saw it.

22 RANDY TSUDA: This is not to answer that part of
23 your question directly. We've reviewed these photographs
24 that were handed out, and we compared them against the park
25 (inaudible) that were contained within the Mitigated
Negative Declaration. The Negative Declaration reported that

1 at certain times and up to 47% of the spaces were utilized
2 in that Miles Avenue lot, and that's generally consistent
3 with what has been submitted in this latest sheet, and it's
4 still consistent with the other observations that you've
5 heard today.

6 So again, I'm not trying to dismiss all the
7 testimony you've heard tonight, I'm simply reacting to the
8 photographs that we've just received, that these are
9 generally consistent with the numbers that were contained in
10 the Negative Declaration.

11 CHAIR TALESFORE: Does that answer your question,
12 Commissioner Rice?

13 COMMISSIONER RICE: Not completely.

14 CHAIR TALESFORE: Okay. Do you have a follow-up
15 question or discussion?

16 COMMISSIONER RICE: The applicant is the one
17 that's providing the information, which we wouldn't take
18 from if it was a different applicant.

19 (Small applause from audience.)

20 COMMISSIONER RICE: Please. So I'm struggling with
21 it. Obviously I'm not saying that it's not correct, I just
22 never saw it to begin with, and now I'm being asked to say
23 that nothing has changed from what I never saw, and that's a
24 concern to me, and I'll leave it at that.

25 COMMISSIONER O'DONNELL: (Inaudible).

1 CHAIR TALESFORE: I'll have to go in order. We'll
2 get right back to you, Commissioner O'Donnell. Commissioner
3 Bourgeois. Oh, I'm sorry, Commissioner Micciche. Oh, I'm so
4 sorry.

5 COMMISSIONER MICCICHE: She keeps doing that. I
6 guess I wanted to get clarification from my fellow
7 Commissioner O'Donnell, my learned lawyer Commissioner here.
8 The statement that the Negative Declaration has been passed
9 and so forth, I thought we saw evidence tonight that during
10 this some time there was a change in that aspect, because we
11 were told one thing but have now seen another in that same
12 period of time. Does that constitute a change?

13 CHAIR TALESFORE: Commissioner O'Donnell, go
14 ahead. You may respond, please.

15 COMMISSIONER O'DONNELL: What I'm trying to say is
16 this. If someone wants to suggest to us that we should not
17 grant the extension, then they have the burden of
18 persuasion, okay? And that means they say look, in your
19 Negative Declaration this is what it said. I didn't hear
20 that tonight. And this is how it's changed, because if you
21 compare today to the Negative Declaration, you can see the
22 change. I heard nothing like that. I heard look at my
23 photos; there are cars in the parking lot. And if you're
24 telling me there aren't cars in the parking lot, there are,
25 and that's great, except that the reason you have some
finality to CEQA is for obvious reasons, and if someone

1 wants to attack a Negative Declaration, the statute provides
2 how long they get to do that. It wasn't attacked here. It
3 wasn't appealed here. It's a final document. I heard not one
4 word saying here's what it said in the Negative Declaration
5 and here is why it's changed. If you want to say there's
6 more than 12% cars parked there, fine, but it isn't our
7 burden to defend the Negative Declaration, it is their
8 burden to show us why the Negative Declaration is no longer
9 current.

10 COMMISSIONER MICCICHE: Just a question back to
11 Mr. O'Donnell, if I may, since it's on the same subject?

12 CHAIR TALESFORE: Okay. Commissioner Bourgeois, I
13 promise we'll get to you.

14 COMMISSIONER MICCICHE: In the Staff Report they
15 refer to the Negative Declaration by stating that there was
16 sufficient parking that was made, that the study that made
17 that show these numbers. The evidence showed during that
18 same time there are higher numbers now.

19 COMMISSIONER O'DONNELL: One thing, I'm not trying
20 to talk anybody out of this.

21 COMMISSIONER MICCICHE: I know. I just want to get
22 clarification.

23 COMMISSIONER O'DONNELL: I will just tell you that
24 a traffic study, as Mr. Murphy pointed out, is usually
25 fairly detailed. I saw the traffic study in 2004. I don't
remember it. We could look at it. But the photos I saw, I

1 can't say they prove the Negative Declaration is wrong. If
2 you can, then you've got better recall than I do.

3 COMMISSIONER MICCICHE: I can't prove it, but I
4 can question it.

5 COMMISSIONER O'DONNELL: But the question becomes
6 whose burden is it? If it is enough to suggest that we
7 should deny this because you have a question, it really
8 raises serious issues as to finality.

9 COMMISSIONER MICCICHE: I don't mind raising them.

10 COMMISSIONER O'DONNELL: I don't care whether this
11 is the skateboard park or anything else, I would like to
12 think that an applicant has some comfort in saying been
13 there, done that, and if you want to say you haven't been
14 there and you haven't done it, or it's changed, then you've
15 got to prove it, and I didn't hear that, that's all.

16 CHAIR TALESFORE: Commissioner Bourgeois, was your
17 comment about what we're talking about, or can I have Vice-
18 chair Kane comment? Okay, Vice-chair Kane.

19 COMMISSIONER KANE: I have the luxury of not being
20 a lawyer, and so do most of the speakers, so I'm going to go
21 way out on a limb and for the first time in my life disagree
22 with Commissioner O'Donnell, not.

23 If the speakers say if this and this and this, and
24 if the speakers say if that, that, and that, you know it's
25 my responsibility to apply what they say to the Mitigated
Negative Declaration to know if there has been a change. I

1 don't think it's theirs. They're not attorneys. I disagree.
2 You know, I could get schooled on that, but I think that
3 makes some sense. I ought to know based on what they say
4 whether or not there's a change, and so I go back to what
5 Commissioner Rice said, maybe I ought to go look, because I
6 didn't.

7 I don't know. This is more complicated than I
8 certainly thought it was going to be. The problem with
9 extensions is that things change, and we've been dealing
10 with this since June 2004. It had tentative go ahead in
11 August 2004, it started the process anyway, and that's three
12 years, two months. And the one thing that's occurred to me
13 while the speakers were coming up and in looking at the
14 children--hi, guys--who came down tonight, is they may not
15 have been here three years and two months ago.

16 My point being that if skateboarding and
17 rollerblading are gaining in popularity, and more and more
18 kids, and more and more ticked off adults, and more and more
19 traffic jams, then we've got more kids headed for that park,
20 and there are specific numbers in this proposal that might
21 need to be reexamined as then applies to safety, as then
22 applies to traffic, parents stopping. If we've got twice as
23 many skateboarders, 50% more than was reported in the
24 report, we may need to look at that.

25 It has nothing to do with delaying the process.
This is due process, the fact that we had an apartment

1 complex like this about two years ago where the applicant
2 had came up for a second extension and town attorney said
3 well you know, sometimes we just give that first extension,
4 because they have a right to look for more financing and do
5 this and do that, and the second one was coming up, and I
6 said, "How many?" and he said well the second one's a little
7 bit more touchy, because you've got the land lying fallow-he
8 didn't say that, I did-land lying fallow and things have
9 changed. Well what had changed was the demand for rental
10 units, and as a consequence the application was withdrawn, I
11 think.

12 What matters is that things do change over time.
13 In one year things can change a lot. In three years they can
14 change a hell of a lot, especially with this town and what
15 we have growing here and how many children we have. I think
16 that may need to be reexamined, given the popularity of the
17 sport. Why? Because it goes to safety.

18 CHAIR TALESFORE: Thank you, Commissioner Kane.
19 And Commissioner Bourgeois, let's go to you.

20 COMMISSIONER BOURGEOIS: I have a couple of
21 comments and questions for Staff mainly.

22 First of all, we heard testimony that the types of
23 numbers of vehicles being used in the Corp Yard has changed.
24 I mean it's the Town's Corp Yard. Has there been a change? I
25 mean we can get that out of the way.

1 ORRY KORB: No. In fact the number of vehicles,
2 trucks, have gone down because of the sale of the Town's
3 Sanitary Sewer Division, and the total headcount in that
4 entire maintenance yard is down below what it was
5 previously.

6 COMMISSIONER BOURGEOIS: Okay, thank you.
7 Secondly, if I could get maybe clarification from the Town
8 Attorney, if you could talk a little bit about the CEQA
9 threshold that tips it from a Mitigated Negative Declaration
10 to a the need for an EIR, because in the past I know we've
11 taken pause on certain projects and stepped back in light of
12 substantial new evidence, taken a look at the adequacy of
13 the CEQA documentation, and how does this differ? Is it
14 because the Mitigated Negative Declaration has already been
15 made?

16 ORRY KORB: Yes.

17 COMMISSIONER BOURGEOIS: And so in those other
18 cases it was not yet approved, so we took pause.

19 ORRY KORB: That's correct.

20 COMMISSIONER BOURGEOIS: So in light of that how
21 do we view this new evidence? I mean if you can maybe
22 comment on Commissioner O'Donnell's perspective.

23 ORRY KORB: I'm not going to tell the Commissioner
24 how to make a decision regarding the evidence. I cannot do
25 that. Commissioner O'Donnell has articulated a very
interesting analysis of how to determine whether a change

1 has occurred, or how to determine whether evidence of a
2 change has been presented. He's expressed his view. He has
3 clearly stated to the rest of the Commission that you may
4 feel differently, but that's one Commissioner's view. The
5 rest of you have to decide this for yourself, you have to
6 weigh this evidence for yourself, you have to take into
7 consideration whatever factors you believe make it possible
8 for you to determine whether a change in circumstances has
9 occurred. I know it's difficult, but that's what you're paid
10 for.

11 CHAIR TALESFORE: Thank you. For that we want a
12 raise.

13 COMMISSIONER BOURGEOIS: I mean to make the
14 Commissioners maybe feel a little better about weighing this
15 evidence, I believe there is CEQA case law that upholds non-
16 technical evidence as substantial evidence.

17 ORRY KORB: Yeah, in the CEQA context, and you're
18 outside of that right now..

19 COMMISSIONER BOURGEOIS: Right.

20 ORRY KORB: ...but yes, in the CEQA context that is
21 true. As a matter of fact I think sitting in the audience
22 someplace is somebody who probably knows quite a bit about
23 that, former-Commissioner Burke, who once had an issue along
24 those lines as well.
25

1 COMMISSIONER BOURGEOIS: But the point I wanted to
2 make is that substantial significant evidence on a topic
3 does not have to come from a technical expert.

4 ORRY KORB: That's correct. You can be deemed an
5 expert just based on your particular knowledge of the facts
6 regarding a specific area, whether you're trained as one or
7 not.

8 CHAIR TALESFORE: I have a question for Mr. Korb,
9 I think. Well I'm not sure whom it would go to, but anyway.
10 So if we did find some significant evidence that could
11 change the environment that we have, can conditions be added
12 to this CUP or not?

13 ORRY KORB: At the beginning of the hearing, and
14 thank you, Commissioner O'Donnell, for clarifying what I
15 said, because it's true, what I did at the beginning of the
16 discussion was read the language from the Code, and B2 of
17 the Code does say, or at least does fairly clearly imply,
18 that new conditions could be added regarding additional
19 facts. But I would be very cautious to do that, because you
20 may have additional facts, but you don't have a lot of study
21 with regard to those facts, and you haven't had the
22 opportunity to determine the impact of the kind of
23 conditions you're talking about, so I'm just simply saying
24 yes, you have the authority, but cautioning you to be very
25 circumspect about how you exercise that authority.

1 CHAIR TALESFORE: Okay. Thank you very much.

2 Commissioner O'Donnell, Micciche, and Commissioner Sayoc.

3 COMMISSIONER O'DONNELL: Let me say this, that an
4 environmental document can become too old, can become stale,
5 can become out of date, in which case we shouldn't rely on
6 it. That would mean that we would make a finding that the
7 Negative Declaration, although when we adopted it it was
8 correct, et cetera, but there have been changes and
9 therefore we should no longer rely on that out of date
10 Negative Declaration.

11 I would suggest to you if that's the occasion it
12 might be nice if we read the Negative Declaration and
13 compared it to the facts we are now hearing, because I can
14 tell you right away that the last time I looked at that
15 Negative Declaration was out of memory. So if people want to
16 continue this so we can look at the Negative Declaration in
17 light of what we've heard and decide whether we think that
18 the environmental documents are stale, at least I could then
19 do it in good conscience and look at it and we could see.
20 But I mean to sit here tonight and say golly, on what we've
21 heard the Negative Declaration, which I question whether any
22 of us remember it, is now out of date, that would be a real
23 leap.

24 So I'm not on one side of the other of this thing,
25 but I am saying lets be very careful in doing it, and if you

1 think the Negative Declaration may be out of date, let's
2 read it.

3 CHAIR TALESFORE: Commissioner Micciche was next,
4 followed by Commissioner Sayoc. Then I'll saying something.

5 COMMISSIONER MICCICHE: Thank you. I've got two
6 others for Staff. What if the recommendation from the
7 Commission were for a continuance so we could study the
8 Negative Declaration? Is this a plausible way to go?

9 ORRY KORB: Can you do that? Yes.

10 COMMISSIONER MICCICHE: Yeah, we can. Okay, and
11 the second one is what if we were to deny the continuance?
12 What is the action that takes place after that?

13 ORRY KORB: Well, your decision is final unless
14 appealed to Council.

15 COMMISSIONER MICCICHE: Okay, thank you.

16 CHAIR TALESFORE: Commissioner Sayoc.

17 COMMISSIONER SAYOC: Actually, I can tell you
18 right now that I don't feel comfortable making a decision
19 without having looked at the Negative Declaration in front
20 of us. I wasn't here three years ago, and after hearing
21 tonight's evidence I can certainly say that I can't make
22 that judgment call, so I would definitely agree that I'd
23 like a continuance at the very least to receive that
24 information.
25

1 The second comment, I guess second question, is a
2 question of Staff. How does approval or denial of the time
3 extension affect the February election?

4 ORRY KORB: I'm going to tell you not to take that
5 into consideration. Your issue is a land use issue and it's
6 defined by the Code. The election issue is a separate one
7 and really shouldn't come into play with regard to your
8 decision-making.

9 CHAIR TALESFORE: Commissioner Kane, and then
10 Commissioner Micciche.

11 COMMISSIONER KANE: I'm ready to make a motion and
12 see if it flies, see if I can get a second. Pardon me? Did
13 you want to make the motion?

14 CHAIR TALESFORE: No, I was referring to
15 Commissioner Micciche.

16 COMMISSIONER KANE: I move that we continue the
17 Conditional Use Permit U-07-155 to a time certain, during
18 which time, if this is a reasonable request, Staff provide
19 for us please a summary of the comments tonight and a copy
20 of the Mitigated Negative Declaration, so that we can reread
21 it and also consider that in light of the testimony we've
22 received this evening, and if we're not specific and limited
23 to that, let's just see if things have changed in three
24 years and two months and if we have to revisit the whole
25 question.

1 COMMISSIONER MICCICHE: I'll second the motion.
2 I'd like to have you add something to it though as the
3 second, and that is that they also evaluate the evidence
4 that was presented tonight to aid us and assist us in
5 understanding if it is a change from the Negative
6 Declaration. Is that a possibility?

7 COMMISSIONER KANE: I'm overwhelmed. You've never
8 seconded one of my motions in five years.

9 COMMISSIONER MICCICHE: I know. It's the first
10 time you've been right.

11 CHAIR TALESFORE: Thank you very much.
12 Commissioner Kane, will you be accepting that?

13 COMMISSIONER KANE: I accept the amendment.

14 CHAIR TALESFORE: Okay, Commissioner O'Donnell.

15 COMMISSIONER O'DONNELL: I guess the one question
16 I have, and I'll direct this to Staff. The CUP runs out on
17 December 8th. Assuming we accept this for a date certain, you
18 know, it's not going to be next week or two weeks from now
19 probably, if we were to deny it tonight, I have this
20 premonition that it might be appealed, and if it were
21 appealed it might indeed get before the Council on or before
22 December 8th, and if it got decided by the Council at least
23 it would be a final determination, whereas when we make a
24 determination it doesn't necessarily come the final
25 determination.

COMMISSIONER MICCICHE: Good point.

1 COMMISSIONER O'DONNELL: And I guess I would hate
2 to see us kill this with kindness. I'm not suggesting that's
3 an answer, but it just occurred to me when we were doing
4 this, perhaps by saying let's study it some more, and Mr.
5 Korb can tell us don't think, but if the reality is that it
6 runs out on December 8th and we have prevented it from
7 reaching finality, I'm going to think. So I throw that out
8 for consideration.

9 CHAIR TALESFORE: That was a question of Staff.

10 COMMISSIONER MICCICHE: I'd like to get Staff's
11 say.

12 CHAIR TALESFORE: That was a question of Staff.

13 ORRY KORB: I am going to say contrary to the
14 opinion of some, I've never told the Commission not to
15 think. But Mr. Tsuda did remind me that you have one meeting
16 scheduled between now and the expiration date, so it is
17 possible. I don't know what scheduling problems there would
18 be, but it is possible to give you that one more bite at the
19 apple before the expiration date. If you were to deny
20 tonight and the matter would be appealed, the date is
21 automatically extended based on the fact that it's been
22 appealed, the expiration date.

23 CHAIR TALESFORE: Do you have one more question?

24 COMMISSIONER O'DONNELL: If were we to take the
25 time and have the one more meeting, and deny it, and it were
appealed, would that automatically stay the...

1 ORRY KORB: Yes.

2 CHAIR TALESFORE: Yes.

3 COMMISSIONER O'DONNELL: So then I feel better.

4 Thank you.

5 CHAIR TALESFORE: Okay, Commissioner Kane.

6 COMMISSIONER KANE: We have extended continuances
7 for the convenience of the calendar before. In this case it
8 would be 12/12, because that's our next date after the
9 November meeting, which is in two weeks. But I remember
10 offering that the continuance be terminated the day after
11 that date certain, so we have done it in the past, have we
12 not? Couldn't we extend this to 12/13 and the date certain
13 be 12/12?

14 ORRY KORB: You did something like that once and I
15 can't recall exactly how that went, but I think what you did
16 was the Commission granted an extension of less than a year,
17 which is something you can do under the Code.

18 COMMISSIONER KANE: My concern is this, if I may,
19 Madam Chair? I don't want to pass this on to Council. We
20 have a job to do and we ought to do it.

21 COMMISSIONER MICCICHE: Yeah, agreed.

22 COMMISSIONER KANE: And then if it has to go to
23 Council for whatever reason, that's fine. Whether or not it
24 goes to Council, I don't care. But I do want to do my job,
25 and Steve's brought up the Mitigated Negative Declaration
question and it's a darn good one. I don't want to pass it

1 onto them until we've decided that. What I need to do, Town
2 Attorney, is change my motion to include the twelfth?
3 CHAIR TALESFORE: Repeat your motion.
4 COMMISSIONER KANE: That we continue CUP U-07-155
5 to a time certain. That we gather evidence. That we get what
6 was said here tonight as provided by Staff, and that we, as
7 Commissioner Micciche said, take that into due
8 consideration. Study the Mitigated Negative Declaration and
9 see if anything has changed. Then we can decide the question
10 and send that to wherever it's going to go. I guess the
11 second plank of that then has to be that we on an ad hoc
12 basis just move the expiration from 12/8 to at least 12/13.
13 CHAIR TALESFORE: We have some clarification from
14 Staff. Mr. Tsuda.
15 RANDY TSUDA: I would recommend that you continue
16 it to the next meeting. You do have one meeting before this
17 permit expires. I would suggest you continue it to November
18 14.
19 COMMISSIONER KANE: Two weeks?
20 RANDY TSUDA: Two weeks.
21 CHAIR TALESFORE: Okay.
22 COMMISSIONER KANE: You think that's adequate time
23 for you to get the info we want?
24 RANDY TSUDA: We'll have to make that work.
25 COMMISSIONER KANE: That's okay with me.
CHAIR TALESFORE: Is that okay with the seconder?

1 COMMISSIONER MICCICHE: No, that's more than fine.
2 CHAIR TALESFORE: Okay, I would support your
3 motion for the very same reason. We didn't have all the
4 information and we have new information being presented to
5 us. It's hard to make a decision when you only have half of
6 a page in your hand. So okay, with that, Commissioners, I
7 will take the vote now. All in favor? Opposed? None. Motion
8 carries 7-0 to continue this case. Thank you.
9 ORRY KORB: A reminder to the members of the
10 audience, the Commission has voted to continue the
11 application to the November 14th meeting.
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